TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. [redacted]

THE UNITED STATES, PLAINTIFFS IN ERROR,

v.

BOSTON AND ALBANY RAILROAD COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED OCTOBER 10, 1887.

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WRIT OF ERROR.

UNITED STATES OF AMERICA, ss.

[SEAL] THE PRESIDENT OF THE UNITED STATES.

To the Honorable the Judges of the Circuit Court of the United States for the District of Massachusetts, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, between the United States of America, plaintiffs, and the Boston and Albany Railroad Company, a corporation duly established by law, and having its usual place of business in Boston, in the District of Massachusetts, defendant, in an action of contract, a manifest error hath happened, to the great damage of the said United States of America, as by their complaint appears.

We being willing, that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done herein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness, the Hon. Morrison R. Waite, Chief Justice of the said Supreme Court, the thirtieth day of July, in the year of our Lord one thousand eight hundred and eighty-seven.

JOHN G. STETSON,
Clerk of the Circuit Court of the United States,
District of Massachusetts.

Allowed by

LEBARON B. COLT, *United States Circuit Judge.*

RETURN ON WRIT OF ERROR.

CIRCUIT COURT OF THE UNITED STATES,
DISTRICT OF MASSACHUSETTS, ss.

And now, here, the Judges of the Circuit Court of the United States, in and for the District of Massachusetts, make return of this writ by annexing hereto and sending herewith, under the seal of the said Circuit Court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof, I, John G. Stetson, clerk of said Circuit Court of the United States, in and for the District of Massachusetts, have hereto set my hand and the seal of said court, this fifth day of October, A. D. 1887.

[SEAL] JOHN G. STETSON, *Clerk.*

TRANSCRIPT OF RECORD.

UNITED STATES OF AMERICA,
MASSACHUSETTS DISTRICT, ss.

At a Circuit Court of the United States, begun and holden at Boston, within and for the District of Massachusetts, on Monday, the sixteenth day of May, in the year of our Lord one thousand eight hundred and eighty-seven, the fifteenth day of said May happening on a Sunday, before

The Honorable LEBARON B. COLT,
Circuit Judge.

No. 806.

THE UNITED STATES OF AMERICA, *Plaintiffs,*

v.

THE BOSTON AND ALBANY RAILROAD COMPANY, A CORPORATION DULY ESTABLISHED BY LAW, AND HAVING ITS USUAL PLACE OF BUSINESS IN BOSTON, IN SAID DISTRICT OF MASSACHUSETTS, *Defendant.*

IN AN ACTION OF CONTRACT.

WRIT DATED SEPT. 30, 1875. *Ad damnum*, $300,000.

This cause was entered at the October term of this court, A. D. 1875, when and where the parties appeared by their respective attorneys, and thence this cause was continued from term to term to the October term, A. D. 1885, when, to wit, March 26, 1886, the following papers were filed, namely: Plaintiffs' Amended Declaration, Defendant's Answer and Stipulation waiving a Jury. At the same time Agreed Facts were filed, but said Agreed Facts were afterwards amended and refiled as hereinafter stated. This cause was thence continued from term to term to the present May term of this court, A. D. 1887, when the Agreed Facts heretofore filed are amended and refiled, July 12, 1887, and with said Agreed Facts are also filed Plaintiffs' Requests for Findings and Defendant's Requests for Findings.

This cause is thereupon submitted to the Court upon the following record and requests for findings: —

PLAINTIFFS' AMENDED DECLARATION.

[FILED MARCH 26, 1887.]

And the plaintiffs say, that heretofore, to wit, on the thirtieth day of June, A. D. 1833, and continuously thereafter to a certain date, to wit, to the thirtieth day of November, A. D. 1867, the Boston and Worcester Railroad Company and the Western Railroad Corporation were severally railroad companies and corporations duly established by law, and existing in said district, and that on the said thirtieth day of November, A. D. 1867, the aforesaid corporations became and were united and consolidated, and since said date, last aforesaid, to the time of suing out this writ have existed by law as one corporation and railroad company, in said district, under the name of the

Boston and Albany Railroad Company, and became and now are the defendant corporation; which said defendant corporation, upon and by said consolidation and union, assumed and promised and became bound by law to pay the just and lawful debts of the said Boston and Worcester Railroad Company and of the said Western Railroad Corporation. And the plaintiffs say, that under and by virtue of the Act of the Congress of the said United States, duly approved on the 1st of July, A. D. 1862, entitled "An Act to provide Internal Revenue to support the Government and to pay Interest on the Public Debt," and by subsequent acts in addition thereto and amendment thereof, the said Western Railroad Corporation, being indebted for certain sums of money, for which bonds and other evidences of indebtedness had been issued, became and was liable by law, among other things, from and after the thirtieth day of September, A. D. 1862, up to and including the thirtieth day of June, A. D. 1864, to pay, by way of tax, to the said United States a duty and tax of three per cent. on the amount of all interest stipulated to be paid, and upon all coupons representing the interest that shall have been issued to be paid by said corporation, upon any bond or other evidence of indebtedness issued by or in behalf of or assumed by said corporation, whenever the said interest or coupons shall be paid; and that under and by virtue of the Act of the Congress of said United States, duly approved on the 30th of June, A. D. 1864, entitled "An Act to provide Internal Revenue to support the Government, to pay Interest on the Public Debt, and for Other Purposes," and by subsequent acts in additon thereto and in amendment thereof, the said Western Railroad Corporation became and was bound by law, from and after said thirtieth day of June, A. D. 1864, to the said thirtieth day of November, A. D. 1867, to pay by way of tax to the said United States a duty and tax of five per centum on the amount of any dividend declared by said corporation, in scrip or money, due or payable to its stockholders, as part of the earnings, profits, income or gains of such company; and the said Western Railroad Corporation also became and was bound by law, under the said Act of Congress and the said additions thereto and

amendments thereof, to pay during the said period to the said United States a tax and a duty of five per centum on all profits of such corporation carried to the account of any fund, and also on the amount of all interest stipulated to be paid, and upon all coupons representing the interest, that shall have been issued to be paid by said corporation, upon any bond or other evidence of indebtedness issued by or in behalf of or assumed by said corporation, whenever the said interest or coupons shall be payable, the said indebtedness of said corporation then existing.

And the plaintiffs further say that the defendant corporation was and is bound by law to pay to the said United States any and all taxes and duties which were due and payable from the said Western Railroad Corporation to the said United States, during the said period from Sept. 30, 1862, to the said June 30, 1864, and during the said period from June 30, A. D. 1864, to the said Nov. 30, A. D. 1867, on account of such dividends, interest and profits, and interest thereon, and that the said defendant corporation, from and after the said thirtieth day of November, A. D. 1867, up to and including the thirtieth day of September, A. D. 1870, became, and was, and is bound by law, to pay to the said United States such tax and duty of five per centum on all such dividends, interest and profits; and that the said defendant corporation, from and after the said thirtieth day of September, A. D. 1870, up to and including Dec. 31, A. D. 1871, became, and was and is bound by law to pay to the said United States such tax and duty, but only at the rate of two and one half per cent. on all such dividends, interest and profits.

And the plaintiffs further say that the said Western Railroad Corporation did, in said year 1867, and prior to the thirtieth day of November, in said year, to wit, on the seventh day of June, A. D. 1867, out of its earnings, profits, income and gains, declare and make to its stockholders as part of its earnings, profits, income and gains, then due and payable to such stockholders, a dividend in scrip, to wit, of its own stock, to wit, twenty thousand shares thereof, each share being then of the par value of $100, and of the actual market value of $140, and the whole twenty thousand shares then being of great market value, to wit, of the market value of $2,800,000, and

thereby became bound in law, and then promised the plaintiffs to pay them, by way of duty and tax thereon, five per centum of said dividend and value, to wit, the sum of $140,000; and the said defendant corporation now owes the plaintiffs said last-named sum, with interest thereon from Jan. 1, A. D. 1868, at the rate of six per cent. per annum.

And the plaintiffs further say that the defendant corporation did, in the years 1870 and 1871, out of its earnings, profits, income and gains, and also in the year 1872, out of its earnings, profits, income and gains for the year 1871, declare and make to its stockholders as part of its earnings, profits, income and gains, due and payable to such stockholders, and paid to such stockholders, certain dividends in money, upon the whole of which said dividends there was payable to the plaintiffs from the said defendant a tax and duty of two and one half per cent. thereof; yet the said defendant neglected and refused to pay to the plaintiffs the said tax and duty of two and one half per cent. upon $71,662 of such dividend made, declared and paid in the year 1870; upon $200,960 of such dividend made, declared and paid in the year 1871; and upon $50,240 of such dividend made, declared and paid in the year 1872, but wholly earned in 1871; and said tax and duty of two and one half per cent. upon these three sums amounts to the sum of $8,071.55, which last-named sum and interest thereon from July 1, 1872, the defendant corporation owes to the plaintiffs.

And the plaintiffs say that the Western Railroad Corporation was on the thirtieth day of June, A. D. 1864, and continuously thereafter up to and including the thirtieth day of November, A. D. 1867, largely indebted to the Commonwealth of Massachusetts for a loan theretofore made to it by the said Commonwealth, and that, to provide for the payment of such indebtedness, the said corporation had before that time established a sinking fund, known as the "Massachusetts Sinking Fund," by the annual contribution to said sinking fund, from the earnings and profits of said railroad, of a certain fixed sum, which said annual contributions had been and were invested in productive securities, and the annual earnings and income of said fund had been and were each year added to the

income of the fund; and the plaintiffs say that the said Massachusetts Sinking Fund on the said thirtieth day of June, A. D. 1864, amounted to a large sum, to wit, to the sum of $2.100,000, and they further say that the earnings of the said fund each year thereafter carried to the principal of the said fund by the said corporation during its existence and by its successor, the defendant corporation afterwards, and invested as part thereof, were profits of the said corporation, carried to a fund of the said corporation, upon which the said Western Railroad Corporation during its existence, and the defendant corporation its successor afterwards, was and were bound by law to pay to the plaintiffs the internal revenue tax of five per centum thereof.

And the plaintiffs say that there was carried to the said fund as the proportion of its earnings for the year 1864, earned after June 30, 1864, the sum of	$39,917 42
And as its earnings for the year 1865, the sum of .	210,300 44
And as its earnings for the year 1866, the sum of .	173,599 87
And as its earnings for the year 1867, the sum of .	196,212 02
And as its earnings for the year 1868, the sum of .	308,217 57
And as its earnings for the year 1869, the sum of .	211,860 52
And that the whole of the said earnings of said fund, from July 1, 1864, to Dec. 31, 1869, amounted to the full sum of	1,140,107 84

Upon which last-named sum the defendant corporation owes, and is bound by law to pay to the plaintiffs, an internal revenue tax of five per centum thereof, to wit, the sum of $57,005.39.

And the plaintiffs further say, that the earnings of said fund, carried as profits to the said fund itself during the year 1870, were $120,653.87, upon two thirds of which, to wit, upon $80,435.90, an internal revenue tax of five per centum thereof, to wit, the sum of $4,021.79, was and is due from the defendant corporation to the plaintiffs; and upon one third of which, to wit, upon $40,217.95, an internal revenue tax of two and one half per cent., to wit, $1,005.45, was and is due from the defendant to the plaintiffs;

which said several taxes of $57,005.39, $4,021.79 and $1,005.45, amounting to the sum of $62,032.67, defendant owes the plaintiffs, with interest thereon from Jan. 1, A. D. 1871.

And the plaintiffs say that the Western Railroad Corporation was on the thirtieth day of June, A. D. 1864, and continuously thereafter, up to and including the thirtieth day of November, A. D. 1867, largely indebted to the city of Albany, a municipal corporation in the Northern District of New York, for a loan theretofore made to it by the said city of Albany, and that, to provide for the payment of such indebtedness, the said railroad corporation had before that time established a sinking fund, known as the Albany Sinking Fund, by the annual contribution to said sinking fund, from the earnings and profits of said railroad, of a certain fixed sum, to wit, of the sum of $10,000, which said annual contributions had been and were invested in productive securities, and the annual earnings and income of said fund had been and were each year added to the principal of the fund; and the plaintiffs say that the said Albany Sinking Fund, on the said thirtieth day of June, A. D. 1864, amounted to a large sum, to wit, to the sum of $800,000; and they further say that the earnings of the said fund each year thereafter, carried to the principal of the said fund by the said corporation during its existence, and by its successor, the defendant corporation, afterwards, and invested as part thereof, and also the annual contribution of the fixed sum thereto, were profits of the said corporation carried to a fund of the said corporation, upon which the said Western Railroad Corporation during its existence, and the defendant corporation, its successor, afterwards, was and were bound by law to pay to the plaintiffs an internal revenue tax of five per centum thereof.

And the plaintiffs say that there was carried to the said fund as the proportion of its earnings for the year 1864, earned after June 30, 1864, the sum of .	$21,604 32
And as its earnings for the year 1865, the sum of .	38,993 04
And as its earnings for the year 1866, the sum of .	52,263 98
And as its earnings for the year 1867, the sum of .	41,094 95
And as its earnings for the year 1868, the sum of .	34,266 25
And as its earnings for the year 1869, the sum of .	29,753 39

And the plaintiffs further say that the said railroad corporation in each of the years 1864, 1865 and 1866, carried from its profits for the said years the sum of $10,000 to the said fund, making for the three years the sum of	$30,000 00
The said sum of $10,000 for the year 1864 being taken from profits of said year accruing after July 1, 1864. And the plaintiffs say that the said earnings and the said contributions during the said years amounted to the full sum of . . .	247,975 93

Upon which last-named sum ($247,975.93) the defendant corporation owes, and is bound by law to pay to the plaintiffs an internal revenue tax of five per centum thereof, to wit, the sum of $12,398.79.

And the plaintiffs further say that the earnings of the said fund carried as profits to the said fund itself during the year 1870 were $36,943.88, upon two thirds of which, to wit, upon $24,629.25, an internal revenue tax of five per cent., to wit, the sum of $1,231.46, was and is due from defendant to the plaintiffs, and upon one third of which, to wit, upon $12,314.63, an internal revenue tax of two and one half per cent., to wit, the sum of $305.81, was and is due from the defendant to the plaintiffs; which said several taxes of $12,398.79, $1,231.46 and $305.81, amounting to the sum of $13,936.06, the defendant owes the plaintiffs with interest thereon from Jan. 1, 1871.

And the plaintiffs further say that the said Western Railroad Corporation, from and after Sept. 30, A. D. 1862, made from its earnings payments of interest stipulated by it to be paid in a certain bond theretofore, by it given to the Commonwealth of Massachusetts, and continued to make from its earnings such payments of interest until the said corporation became a part of the defendant corporation, as in this declaration heretofore set forth, from which period the said defendant corporation continued to make from its earnings such payments of interest down to and including the year ending Dec. 31, A. D. 1871.

And the plaintiffs say that the payments of such interest were the payments of the coupons of interest accruing semi-annually on cer-

tain sterling scrip, or certificates of debt, which had been received by said Western Railroad Corporation from the said Commonwealth of Massachusetts, to aid in the construction and equipment of its road, and which said scrip or certificates of debt the said railroad corporation, in and by said bond, had assumed as its own debt and had agreed to pay both the principal thereof and the interest thereon, — the interest as it accrued semi-annually, and the principal as it matured.

And the plaintiffs say the payments by the said Western Railroad Corporation from its earnings of such coupons of interest, accruing or payable and paid between said Sept. 30, 1862, and June 30, 1864, amounted to the sum of $431,952, upon which sum there was due and payable to the United States from the said corporation an internal revenue tax of three per centum; that of this amount of $431,952, the sum of $57,592 was due from said corporation, and was by it paid to the holders of said scrip resident within the United States, and the said corporation paid to the United States the internal revenue tax of three per cent. on said sum of $57,592; but that on the remainder of said coupons of interest, to wit, on $374,360 (that being the remainder after deducting $57,592 from $431,952), no internal revenue tax has been paid; and the plaintiffs say the said Western Railroad Corporation owed, and this defendant now owes, to the United States an internal revenue tax of three per cent. on said amount of $374,360, to wit, the sum of $11,230.80 and interest thereon.

And the plaintiffs say the payments from its earnings by the said Western Railroad Corporation and by this defendant of such coupons of interest after said June 30, 1864, and prior to Sept. 30, 1870, the said interest being payable or accruing between those dates, amounted to the sum of $1,111,348, upon which sum there was due and payable to the United States from the said Western Railroad Corporation, and from this defendant corporation, an internal revenue tax of five per centum; that of this amount of $1,111,348, the sum of $178,478 was due from said corporations, and was by them paid to the holders of said scrip resident within the United States, and the said corporations (that is to say, the said Western Railroad Corporation while it was a separate corporation, and this

defendant corporation after the said Western Railroad Corporation had become merged in it) paid to the United States the internal revenue tax of five per cent. on said sum of $178,478, but that on the remainder of said coupons of interest, to wit, on $932,870 (that being the remainder after deducting the said $178,478 from the said $1,111,348), no internal revenue tax has been paid; and the plaintiffs say that this defendant corporation now owes to the United States an internal revenue tax of five per cent. on said amount of $932,870, to wit, the sum of $46,643.50, and interest thereon.

And the plaintiffs say the payments from its earnings by the said defendant corporation of such coupons of interest, after said Sept. 30, 1870, and prior to Dec. 31, 1871, amounted to the sum of $25,184, and that on no part of this sum has any internal revenue tax been paid. And the defendant corporation owes the United States an internal revenue tax of two and one half per cent. on said $25,184, to wit, the sum of $629.60, and interest thereon.

And the plaintiffs further say that the said several taxes claimed as due from the defendant to the plaintiffs' in the several counts of this amended declaration, were demanded of the defendant corporation, which said corporation neglected and refused to pay, and still neglects and refuses to pay the same.

GEORGE P. SANGER, *U. S. Attorney*,
Att'y for Plaintiffs.

DEFENDANT'S ANSWER.

[Filed March 26, 1886.]

The Boston and Albany Railroad Company, the defendant in the above-entitled action, answering to the plaintiff's writ and amended declaration therein, denies each and every allegation in said amended declaration contained and not herein specifically admitted to be true.

It admits that on the thirteenth day of June, A. D. 1833, and thereafter to the thirtieth day of November, A. D. 1867, the Boston and Worcester Railroad Corporation and the Western Railroad Corporation were severally railroad corporations existing in said district,

and were, on said last-named day, consolidated into a new corporation under the name of the Boston and Albany Railroad Company, which new corporation has ever since existed and still exists in said district.

This defendant denies that it owes the plaintiff any taxes which were assessed to or against the Boston and Worcester Railroad Corporation or the Western Railroad Corporation.

And it avers that before the consolidation of said corporations, the proper officers of the plaintiff, after full access to the books and accounts of each of said corporations, and after full reports therefrom, assessed for each year after said thirtieth day of September, A. D. 1862, until said consolidation to and against each of said corporations, and after said consolidation till the year 1872, assessed against the defendant for each year all taxes which were provided for by the acts of Congress, under which the plaintiff proceeds in this action, and all the taxes so assessed were fully paid by said corporations respectively, or by this defendant; and this defendant avers that it does not owe and cannot legally be assessed for any taxes, if any such there be, which might have been and were not in due time assessed to or against said corporations, or either of them, or against this defendant.

Further answering, the defendant denies that said Western Railroad Corporation declared, as a part of or out of its income, earnings, profits or gains, a dividend in scrip of its own stock as in said declaration alleged, to the amount of twenty thousand shares, or any other amount.

And it avers that under and by virtue of three acts of the General Court of the State of Massachusetts, one passed in the year 1838, one in the year 1839, and the other in the year 1844, copies of which acts this defendant will produce in evidence, the State of Massachusetts issued in aid of the construction and equipment of the road of said Western Railroad Corporation its sterling bonds to an amount equal to $4,000,000. Said acts required that any premium above the par value of said bonds, realized from the sale thereof, should be held and invested by a trustee or trustees, and, with the accumulations thereon, should be a sinking fund for the final redemption of said scrip or bonds; and that after the road should be opened for use,

the said Western Railroad Corporation should pay, annually, to the trustees of said sinking fund, one per cent. on the par value of said scrip or bonds, and the sum so paid, with the interest accruing thereon, should be a part of said sinking fund. And on the thirtieth day of December, A. D. 1844, said sinking fund, being the amount of premium or profits on the sale of said scrip or bonds and accumulations thereon, was $199,451, which sum, with the accumulations thereon, constituted a part of said fund thenceforward until the final redemption of scrip and bonds of the State of Massachusetts thereby.

And on said thirtieth of December, A. D. 1844, said Western Railroad Corporation made its first payment to the trustees of said sinking fund, said payment being the sum of $40,000, one per cent. of the par value of said scrip or bonds of the State of Massachusetts, issued as aforesaid. And thereafter, to and including the year 1866, said Western Railroad Corporation, annually, in the month of December, paid to said trustees the sum of $40,000, in accordance with the requirements of said acts.

On the thirtieth day of June, 1864, the sinking fund thus created amounted to $2,182,697.17. This fund, with its accumulations, independently of the payments by the Western Railroad Corporation to the trustees for the years 1864, 1865 and 1866, and the accumulations thereon, amounted, on the seventh day of June, 1867, to $2,765,213.11.

Bonds of the State of Massachusetts, issued as aforesaid, were to fall due on the first of April, and the first of October, 1868, to the amount of $2,268,000. That part of the cost of the construction of the road which had been paid for by the proceeds of bonds of the State of Massachusetts, issued as aforesaid, had never been represented by stock, and the Western Railroad Corporation was about to be consolidated with the Boston and Worcester Railroad Corporation, and on the seventh of June, 1867, a distribution of stock to the stockholders of the Western Railroad Corporation was made, to represent, approximately, that portion of the cost of construction not already represented by stock, which equaled the amount of said bonds, the payment of which was already provided for by said sinking fund. The amount of said stock was charged to the accumulations of said sinking fund. And the defendant avers that the

stock so issued was not, within the meaning of the acts of Congress under which this action proceeds, a dividend out of or as part of the earnings, profits, incomes or gains of the Western Railroad Corporation.

The defendant admits that it paid no tax on a portion of its dividends made in the years 1870, 1871 and 1872, as set forth in the plaintiff's declaration. It avers that that portion of its dividends was the dividends on stock owned by the State of Massachusetts, and that no tax was paid thereon in accordance with the decision of the proper officer of the plaintiff, who had paid back to the State of Massachusetts, as having been illegally assessed, a large sum of money, to wit, more than $50,000, which had been paid by this defendant or its predecessor, the Western Railroad Corporation, as taxes assessed on dividends on the stock of the two corporations owned by said State; and further avers that the dividend referred to in said declaration as paid in the year 1872 was not taxable under the law on the 15th of May of that year when it was declared, nor at any time thereafter; and says that no tax was or could be legally assessed on account of said dividends on stock owned by the State of Massachusetts, or either of them.

Further answering, the defendant denies that the Western Railroad Corporation was, on the thirtieth day of June, 1864, or thereafter until the thirtieth day of November, 1867, or during any part of the period within said dates, indebted to the Commonwealth of Massachusetts for a loan theretofore made to it by the Commonwealth.

And it avers that the sinking fund known as the Massachusetts Sinking Fund was created and established and increased under the circumstances, for the purpose, and by the means hereinbefore set forth and in no other way; and that said fund, with the annual payments thereinto, had been invested in productive securities, and, with its earnings and accumulations, amounted, on the 30th of June, 1864, to $2,182,697.17.

And it avers that said sinking fund was not owned or controlled, nor were its earnings, income or profits owned or controlled by the Western Railroad Corporation, but the same were owned and controlled by trustees, called commissioners, appointed under the provisions of and for the purposes set forth in the acts of the General

Court of Massachusetts hereinbefore referred to. And it denies that the annual payments by said Western Railroad Corporation to the commissioners of said sinking fund, after the thirtieth day of June, 1864, and before the thirtieth day of November, 1867, or by the defendant after the thirtieth day of November, 1867, as set forth in the plaintiff's declaration, or any of them, were profits of the Western Railroad Corporation, or of the defendant, carried to a fund within the meaning of the said acts of Congress, and denies that said Western Railroad Corporation, during its existence, or the defendant corporation, was or is bound by law to pay to the plaintiff an internal revenue tax thereon or any part thereof.

It avers that the earnings of said fund for the year 1864 after the thirtieth day of June were $39,917.42, and no more.

It admits that the earnings of said fund for the years 1865 to 1869, inclusive, were as set forth in the plaintiff's declaration.

It avers that a large part of the earnings of said sinking fund was the earnings of bonds issued by the United States, the plaintiff, on which no tax could be legally assessed; and that another large part of the earnings of said sinking fund was the income from bonds, from which the makers deducted the internal revenue tax, as said acts of Congress permitted them to do, so that the trustees of the sinking fund did not receive the whole income thereof, but only the income less the revenue tax thereon; and that another large part of the earnings of said sinking fund was the interest on bonds of the Commonwealth of Massachusetts, issued as aforesaid, on which no revenue tax was or could be legally assessed.

The amount of earnings of said sinking fund from June 30, 1864, to Dec. 31, 1869, from bonds of the United States, the plaintiff, was . .	$541,207 28
From bonds of the State of Massachusetts . .	209,167 62
From securities on which the obligor paid the tax .	133,966 00
The amount of earnings of said sinking fund, during the year 1870, from bonds of the United States, was	38,232 30
From bonds of the State of Massachusetts . .	3,611 87
From bonds on which the obligor paid the tax .	6,027 00

The defendant avers that a large part of the earnings of said fund from June 30, 1864, to Sept. 30, 1870, to wit, the sum of $346,304.03, was the earnings of that part of said fund which was created by the premium above the par value of said sterling bonds realized from the sale thereof and the accumulations thereon, as follows: —

From June 30, 1864, to Nov. 30, 1864 . .	$9,731 44
For the year ending Nov. 30, 1865 . . .	60,429 88
For the year ending Nov. 30, 1866 . . .	49,086 88
For the year ending Nov. 30, 1867 . . .	54,665 64
For the year ending Nov. 30, 1868 . . .	84,709 07
For the year ending Nov. 30, 1869 . . .	56,381 59
For the year ending Sept. 30, 1870 . . .	31,299 53
Total	$346,304 03

The defendant avers that a large part of the earnings of said fund from the thirtieth day of June, 1864, to the thirtieth day of September, 1870, was the earnings of that part of said fund which had accumulated before said thirtieth day of June, 1864, as follows: —

From June 30, 1864, to Nov. 30, 1864 . .	$33,264 51
For the year ending Nov. 30, 1865 . . .	206,571 65
For the year ending Nov. 30, 1866 . . .	167,800 28
For the year ending Nov. 30, 1867 . . .	186,867 79
For the year ending Nov. 30, 1868 . . .	289,567 27
For the year ending Nov. 30, 1869 . . .	192,715 59
For the year ending Sept. 30, 1870 . . .	106,992 53
Being in all	$1,183,779 62

And avers that no tax was or could be legally assessed to or upon the defendant or the Western Railroad Corporation by reason of the earnings of said sinking fund from said bonds of the United States, the plaintiff, said bonds of the State of Massachusetts, or said bonds on the income of which the obligor paid the internal revenue tax, or by reason of the earnings of that part of said fund which grew out of said premium and the accumulations thereon, or by reason of the

earnings of that part of said fund which had accumulated on or before June 30, 1864.

The defendant denies that the Western Railroad Corporation was, on the thirtieth day of June, A. D. 1864, or on the thirtieth day of November, A. D. 1867, or at any time between those dates, indebted to the city of Albany for a loan theretofore made to it by said city; and denies that, to provide for the payment of any such indebtedness, or for any other purpose, it had made contributions to a sinking fund known as the Albany Sinking Fund out of its earnings or profits.

It avers that the city of Albany issued its bonds in aid of the construction of the road of the Albany and West Stockbridge Railroad Corporation, a corporation established in and by the laws of the State of New York; and in accordance with the terms of the contract under which the bonds of said city were issued, the sum of $100,000, a part of the proceeds of the sale of said bonds, was paid over to trustees to be, with its accumulations, a sinking fund, and said contract provided that there should be paid annually, to said trustees, a sum equal to one per cent. of the par value of the bonds so issued by said city, which sums, being $10,000 annually, with the accumulations thereon, should be a part of said sinking fund.

On the first day of January, 1844, the value of said sinking fund, being wholly made up of proceeds of the sale of said bonds and accumulations thereon, was $120,500.78.

After the making of the contract with the city of Albany under which said bonds were issued, to wit, on the eighteenth day of November, A. D. 1841, the Albany and West Stockbridge Railroad Company, by indenture, leased its road to the Western Railroad Corporation, and the Western Railroad Corporation, in said indenture, agreed to pay, as rent, under said lease, the interest on said bonds as the same should fall due. And said lease was, by its terms, made subject to a mortgage of said road and its equipment to the city of Albany to secure payment of said bonds issued by said city of the par value of one million dollars, and the Western Railroad Corporation, as a part of the consideration of said lease, undertook therein, after applying to the payment of said bonds the proceeds of said sinking fund, to pay any balance thereof, as the same should become due and payable. And the defendant avers

that by the consolidation of said Western Railroad Corporation and the Boston and Worcester Corporation, as aforesaid, it became, to all intents and purposes, the lessee of the road of the Albany and West Stockbridge Railroad Company; and further, that all payments by said Western Railroad Corporation, and all payments by the defendant into and to the trustees of said sinking fund, were in the nature of rent and were a part of the expenses of said corporations respectively, and were not, in any sense, profits of either of said corporations carried to a fund; and neither the Western Railroad Corporation nor this defendant can be legally taxed by reason thereof or of any part thereof.

The value of the Albany sinking fund (so called) on the thirtieth day of June, 1864, was $865,480.52, and a large part of the earnings of said sinking fund, after said date, was the earnings of that portion of the fund which had theretofore accumulated, as follows: —

From June 30, 1864, to Nov. 30, 1864 . . .	$21,604 32
For the year ending Nov. 30, 1865 . . .	38,558 38
For the year ending Nov. 30, 1866 . . .	51,135 12
For the year ending Nov. 30, 1867 . . .	39,807 71
For the year ending Nov. 30, 1868 . . .	33,193 64
For the year ending Nov. 30, 1869 . . .	28,822 04
For the year ending Sept. 30, 1870 . . .	35,787 40
Being in all	$248,908 61
The only other additions to said sinking fund between June 30, 1864, and Sept. 30, 1870, were three annual contributions of $10,000 each by said Western Railroad Company . . .	$30,000 00
And the accumulations thereon	6,010 25
Total	$36,010 25

The earnings of said sinking fund in 1864, after June 30, were $21,604.32, and no more.

The earnings of the said fund for the years 1865 to 1870, inclusive, were set forth in the plaintiff's declaration. And the defendant avers that said earnings were not, nor was any part of them, profits

of the Western Railroad Corporation or of this defendant carried to a fund within the meaning of the acts of Congress under which this action proceeds, and declares that no tax ever was, or could be, legally assessed to or upon the Western Railroad Corporation or this defendant by reason thereof or of any part thereof.

This defendant admits that, in each of the years 1864 and 1865 and 1866, the Western Railroad Corporation paid to the trustees of said fund the sum of $10,000 (in all, the sum of $30,000), but avers that no part of said sum was profits of said corporation carried to a fund, but that said sum was paid as a part of the rent or consideration for said lease of the Albany and West Stockbridge Railroad; and further avers that no tax was, or could be, legally assessed to or upon said Western Railroad Corporation or this defendant by reason of said payment.

The defendant further avers that a part of the earnings of said Albany Sinking Fund, to wit, the sum of $2,300, was the interest on bonds issued by the United States, the plaintiff, and that no revenue tax was or could be legally assessed to the Western Railroad Corporation, or to this defendant thereon.

It further avers that, during the years from 1864 to 1870, both inclusive, a part of the earnings of said funds, to wit, $3,161.21, was the income from or interest on bonds on which the revenue tax or interest was paid by the obligor, so that the trustees of said fund did not receive the whole income provided for by said bonds, but only that income less the amount of income tax thereon.

The defendant admits that between Sept. 30, 1862, and June 30, 1864, it paid the amount of interest on the bonds issued by the State of Massachusetts, which is alleged in plaintiff's declaration.

The defendant avers that, between June 30, 1864, and Nov. 30, 1867, the Western Railroad Corporation paid $737,432.90, the interest which fell due during that period on said bonds issued by the State of Massachusetts as aforesaid; which interest was paid to the holders of the bonds, none of whom held any contract, undertaking or obligation from said Western Railroad Corporation for the payment of said interest, or any part thereof.

And it avers that it paid, as interest on said bonds, falling due

after the 1st of October, 1867, and before the 30th of September, 1871, $377,991.85, and no more.

It avers that the interest of said bonds was payable in London and in gold or its equivalent, and that by reason of the depreciation of the currency of the United States, the Western Railroad Corporation was obliged to pay the further sum of $529,419.98 as premium in order to provide the gold or its equivalent for the payment of said interest; and this defendant, for the same reason, was obliged to pay the additional sum of $199,738.49.

The defendant avers that neither said payments of interest by the Western Railroad Corporation, nor said payments of interest by itself, nor said payments of premium by either of them, were payments of interest on money for which said corporations respectively were indebted, and for which bonds or other evidence of indebtedness had been issued within the meaning of the acts of Congress under which this action proceeds, and denies that any tax was or could legally be assessed on or against said Western Railroad Corporation or this defendant by reason of said payments, or any of them.

The defendant denies that it paid any interest on said bonds for the three months from Oct. 1, 1871, to Dec. 31, 1871.

It avers that the last of said bonds matured on the first day of April, 1871, and were then paid.

The defendant further avers that after June 30, 1864, and before the first day of January, 1871, it reserved from the holders of said sterling bonds resident in the United States, and paid to the plaintiff, out of the interest payable thereon as taxes, under the acts on which this case proceeds, the sum of $8,216.51, of which amount the sum of $6,071.62 was reserved from the interest due on bonds which formed a part of said Massachusetts Sinking Fund, being the equivalent in currency of the tax claimed by the plaintiff to be due on account of $116,433.26 of the earnings of said fund, included in the statement of those earnings hereinbefore made.

It avers that it paid to the plaintiff the whole revenue tax claimed by it to have become due from the defendant under said acts of Congress, out of the interest on the bonds issued by the city of Albany, as aforesaid.

The defendant denies that the said several taxes claimed as due

from it to the plaintiff in the several counts of its declaration, or any of them, were in due form of law assessed upon the defendant.

And the defendant says that the amount paid by it to the plaintiff as taxes on the interest paid on said bonds of the State of Massachusetts ought to be credited to it against any taxes, if any there be, which are claimed in said declaration, and which shall be found to be due from the defendant to the plaintiff.

THE BOSTON AND ALBANY RAILROAD COMPANY,
by A. L. SOULE,
its Attorney.

STIPULATION WAIVING A JURY.

[FILED MARCH 26, 1886.]

Trial by jury in the above-entitled case is hereby waived, and the case may be tried and determined by the court without the intervention of a jury, under the provisions of Sects. 649 and 700 of the Revised Statutes of the United States.

GEORGE P. SANGER, *U. S. Att'y,*
Attorney for the Plaintiffs.
A. L. SOULE,
Attorney for the Defendant.

AGREED FACTS.

[FILED MARCH 26, 1886.]

(amended and refiled July 12, 1887)

The following facts in the above-entitled case are hereby agreed: —

The Boston and Worcester Railroad Corporation was incorporated by the Legislature of Massachusetts, by Chap. 72 of the Acts of 1831, and the Western Railroad Corporation by Chap. 116 of the Acts of 1833.

Under the provisions of Chap. 270 of the Acts of 1867, the two corporations were consolidated under the name of the Boston and Albany Railroad Company, the new corporation succeeding to all

the rights and privileges, and assuming all the duties and obligations, of the two corporations thus consolidated.

By Chap. 131 of the Acts of 1836, and by subsequent acts, the Commonwealth of Massachusetts was authorized to subscribe and pay for shares of stock of the Western Railroad Corporation to a large amount; which shares it did subscribe and pay for; and during the whole tax period it was the owner of the number of shares in the said corporation, and afterwards in the new corporation, upon the dividends on which the internal revenue tax is now claimed by the United States in this suit.

By Chap. 9 of the Acts of 1838, approved Feb. 21, 1838, entitled "An Act to aid the Construction of the Western Railroad," the Commonwealth of Massachusetts gave its aid to the corporation to the amount of $2,100,000.

The Act is as follows: —

Section 1. The treasurer of the Commonwealth is hereby authorized and directed to issue scrip or certificates of debt in the name and in behalf of the Commonwealth, and under his signature and the seal of the Commonwealth, for the sum of two million one hundred thousand dollars, which may be expressed in the currency of Great Britain, and shall be payable to the bearer thereof in London, and bearing an interest of five per cent. per annum, payable semi-annually in London, on the first days of April and October, with warrants for the interest attached thereto, signed by the treasurer; which scrip or certificates shall be redeemable in London at the end of thirty years from the date thereof, and in no case exceeding thirty years from the first day of April in the year one thousand eight hundred and thirty-nine, and shall be countersigned by the governor of the Commonwealth, and be deemed a pledge of the faith and credit of the Commonwealth for the redemption thereof. And the treasurer of the Commonwealth shall, under the conditions hereinafter provided, deliver the same to the treasurer of the Western Railroad Corporation, for the purpose of enabling said corporation to complete the Western Railroad.

Sect. 2. When the said corporation shall have received, to be expended in the construction of said road, the one half of the fifth assessment of five per cent. upon the stock held by private stock-

holders, and shall have filed a certificate thereof in the office of the treasurer of the Commonwealth, signed by the directors of said corporation, then the said fifth assessment on the shares of said stock owned by the Commonwealth shall be paid; anything in the Act in aid of the Western Railroad Corporation, passed April fourth, in the year one thousand eight hundred and thirty-six, to the contrary notwithstanding. And the scrip or certificates of debt for the one half of the amount authorized by the first section of this act shall be thereafter delivered to the treasurer of said corporation. And when the said corporation shall have received, to be expended as aforesaid, upon the said fifth assessment, seventy-five per cent. of the amount thereof due from the private stockholders, and also upon the sixth assessment of five per cent. upon their stock, seventy-five per cent. of the amount thereof so due from the private stockholders, and shall have filed a certificate thereof as aforesaid, then the said sixth assessment on the shares of said stock owned by the Commonwealth shall be paid, and the scrip or certificates of debt for the remaining part of the amount thus authorized shall be thereafter delivered to the treasurer of said corporation; *provided, however*, that said scrip shall not be thus delivered in larger sums than three hundred thousand dollars at one time; and after the delivery of the first three hundred thousand dollars of said scrip, the residue thereof shall not be delivered to said treasurer, until it shall be made to appear, to the satisfaction of the governor and council, that at least two thirds of the proceeds of the scrip previously delivered shall have been faithfully expended or appropriated for the construction of said road, or providing engines, cars, and other appurtenances thereof. And if said corporation shall give security, to the satisfaction of the governor and council, for the payment of any part of the assessments, in this section required to be made, such security shall be deemed to be equivalent to the payment of the amount so secured.

SECT. 3. The premium or profits on the sales of said scrip or certificates of debt shall, when received, be paid by said corporation to the treasurer of the Commonwealth; and after the said road shall be opened for use, a sum equal to one per cent. on the amount of said scrip thus issued shall be annually set apart from the income

of said road, and paid to said treasurer; and the whole thereof shall be by him placed at interest, and the same, with the interest annually accruing thereon, shall constitute a sinking fund for the future purchase or final redemption of said scrip.

SECT. 4. The said corporation shall, during the year one thousand eight hundred and thirty-eight, and as soon as the same can conveniently be done, commence the construction of such part of said road lying between Springfield and Pittsfield as will require the longest time for its completion, and prosecute the same in such manner as to secure the completion of the whole road from Springfield to the western line of the State as early as is practicable, with a due regard to economy.

And no part of the funds of said corporation shall be appropriated to the construction of any branch of the road, until the completion of the main line thereof. But if the directors judge it best for the interest of the public and of the corporation, they may construct, or authorize others to construct under them, a branch from their main road to the village of West Stockbridge.

SECT. 5. No part of said scrip shall be delivered to the treasurer of said corporation until said corporation, at an annual meeting, or at a special meeting duly notified for that purpose, shall have assented to the provisions of this Act, and shall have executed to the Commonwealth a bond, in such form as the attorney-general shall prescribe, conditioned that said corporation shall comply with the requisitions of this Act, and shall faithfully expend the proceeds of said scrip in the construction of their road, and shall indemnify and save harmless the Commonwealth from all loss or inconvenience on account of said scrip or certificates of debt, and that said corporation shall and will pay the principal sum of the said scrip or certificates which may be delivered to their treasurer punctually in London, when the same shall become due, or such part thereof as the sinking fund aforesaid may prove insufficient to pay, and the interest thereon, semi-annually, in London, as the same shall fall due; and shall also convey to the Commonwealth, by a suitable instrument, to be prepared for that purpose, under the direction of the attorney-general, their entire road, with its income, and all the franchise and property to them belonging, as a pledge or mortgage to secure the perform-

ance of all the conditions of said bond; *provided*, that the Commonwealth shall not take possession of said pledged or mortgaged property, unless for a substantial breach of some condition of said bond.

SECT. 6. Nothing in this Act contained shall be construed to impair or lessen the right of the Commonwealth to purchase the said railroad, and all the franchise, property, rights and privileges of said corporation, on the terms and conditions contained in their act of incorporation. And if, on said purchase, the Commonwealth shall have paid or shall pay or assume to pay said scrip, or any part thereof, the amount which they shall have so paid or shall pay or assume shall not be deemed to be a part of the cost of the road, for which the Commonwealth shall pay interest on said purchase within the provisions of said act of incorporation.

SECT. 7. This Act shall take effect from and after its passage. [*Approved* Feb. 21, 1838.]

By Chap. 70 of the Acts of 1839, entitled "An Act to aid the Construction of the Western Railroad," the Commonwealth gave additional aid to the corporation to the amount of $1,200,000.

The Act is as follows: —

SECTION 1. The treasurer of the Commonwealth is hereby authorized and directed to issue scrip or certificates of debt in the name and in behalf of the Commonwealth, and under his signature and the seal of the Commonwealth, for a sum not exceeding one million two hundred thousand dollars, which may be expressed in the currency of Great Britain, and shall be payable to the bearer thereof in London, and bearing an interest of five per cent. per annum, payable semi-annually in London, on the first days of April and October, with warrants for the interest attached thereto, signed by the treasurer; which scrip or certificates shall be redeemable in London at the end of thirty years from the date thereof, and in no case exceeding thirty years from the first day of October, in the year one thousand eight hundred and forty, and shall be countersigned by the governor of the Commonwealth, and be deemed a pledge of the faith and credit of the Commonwealth for the redemption thereof. And the treasurer of the Commonwealth shall, under the conditions hereinafter provided, deliver the same to the treasurer of the Western

Railroad Corporation, for the purpose of enabling said corporation to complete the Western Railroad.

SECT. 2. Whenever it shall be made to appear, to the satisfaction of the governor and council, that at least two thirds of the last instalment of the scrip authorized to be delivered to the treasurer of said corporation, by the Act passed the twenty-first day of February, in the year one thousand eight hundred and thirty-eight, shall have been expended or appropriated, as is required in the second section of said Act, then a part of said scrip hereby authorized to be issued to the amount of four hundred thousand dollars shall be delivered to the treasurer of said corporation. And when the said corporation shall have laid an assessment of five per cent. on the capital stock owned by the private stockholders, to be expended on the construction of said road, and shall have collected seventy-five per cent. of said assessment, amounting to the sum of seventy-five thousand dollars, and shall have filed a certificate thereof in the office of the treasurer of the Commonwealth, signed by the directors of said corporation, the said scrip, for a farther amount of four hundred thousand dollars, shall be delivered to the treasurer of said corporation. And when the said corporation shall have laid a farther assessment of five per cent. upon the capital stock of the private stockholders to be expended as aforesaid, and have collected seventy-five per cent. thereof, such part of the residue of said scrip as shall, in the opinion of the governor and council, in addition to said assessments, be necessary to enable said corporation to complete their road and put the same in full operation shall be delivered to the treasurer of said corporation.

SECT. 3. The premium or profits on the sales of said scrip shall, when received, be paid to the treasurer of the Commonwealth, by said corporation; and after their said road shall be opened for use, a sum equal to one per cent. on the amount of the scrip (which shall be delivered to the treasurer of said corporation by virtue hereof) shall be annually set apart from the income of said road, and paid to the treasurer of the Commonwealth; and the whole thereof shall be added to the sinking fund of said corporation, and be managed, invested and appropriated as is provided by law in relation thereto.

SECT. 4. This Act shall not take effect until said corporation at an annual meeting, or at a special meeting duly notified for that purpose, shall have assented to the provisions thereof, and shall have executed to the Commonwealth a bond, in such form as the attorney-general shall prescribe, conditioned that said corporation shall comply with the provisions of this Act, and shall faithfully expend the proceeds of said scrip in the construction of their road, and shall indemnify and save harmless the Commonwealth from all loss or inconvenience on account of said scrip; and that said corporation shall well and truly pay the principal sum of said scrip, which may be delivered to their treasurer punctually in London when the same shall become due and payable, or such part thereof as the sinking fund aforesaid may prove insufficient to pay, and the interest thereon semi-annually, in London, as the same shall fall due; and shall also reaffirm to the Commonwealth, by a suitable instrument, to be prepared for that purpose under the direction of the attorney-general, the conveyance of their entire road, with its income and all the franchise and property to them belonging, as a pledge or mortgage to secure the performance of all the conditions of said bond; *provided*, that the Commonwealth shall not take possession of said pledged or mortgaged property under and by virtue of said mortgage, unless for a substantial breach of some condition of said bond.

SECT. 5. The Commonwealth may, at any time after this Act shall take effect, purchase of the said corporation the said Western Railroad, and all the franchise, property, rights and privileges of said corporation, by paying them therefor such a sum as will reimburse them the amount of capital paid in, with a net profit thereon of seven per cent. per annum from the times of the payment thereof by the stockholders to the time of such purchase. And if, on said purchase, the Commonwealth shall have paid, or shall then pay, or assume to pay, the scrip issued by them by virtue of this Act, or of the Act passed the twenty-first day of February, in the year one thousand eight hundred and thirty-eight, or any part thereof, the amount which they shall have so paid, or shall pay or assume, shall not be deemed to be a part of the cost of the road, or of the capital paid in, for which the Commonwealth shall pay a net profit, as above;

excepting, however, such part of said scrip as the said corporation shall, at the time of such purchase, have actually paid.

SECT. 6. Four of the directors of said corporation shall be annually chosen by the Legislature, by joint ballot of the two houses, and the residue by the stockholders at their annual meeting. [*March* 23, 1839.]

By Chap. 131, of the Acts of 1841, entitled "An Act to complete the Construction of the Western Railroad," the Commonwealth gave additional aid to the corporation, to the amount of $700,000. The Act is as follows:—

SECTION 1. The treasurer of the Commonwealth is hereby authorized and directed to issue scrip or certificates of debt, in the name and in behalf of the Commonwealth, and under his signature, and the seal of the Commonwealth, for the sum of seven hundred thousand dollars, which may be expressed in the currency of Great Britain, and shall be payable to the bearer thereof in London, and bearing an interest of five per cent. per annum, payable semi-annually in London, on the first days of April and October, with warrants for the interest attached thereto, signed by the treasurer; which scrip or certificates shall be redeemable in London at the end of thirty years from the date thereof, and in no case exceeding thirty years from the first day of October, in the year one thousand eight hundred and forty-three, and shall be countersigned by the governor of the Commonwealth, and be deemed a pledge of the faith and credit of the Commonwealth for the redemption thereof. And the treasurer of the Commonwealth, under the conditions hereinafter provided, shall deliver the same to the treasurer of the Western Railroad Corporation, for the purpose of enabling the said corporation to complete and put in operation the Western Railroad, and the Albany and West Stockbridge Railroad.

SECT. 2. Whenever it shall be made to appear, to the satisfaction of the governor and council, that at least one half of the last instalment of the scrip authorized to be delivered to the treasurer of said corporation by the Act passed on the twenty-third day of March, in the year one thousand eight hundred and thirty-nine, shall have been expended or appropriated for the construction of the Western Railroad, or for putting the same in operation; and when

the said corporation shall have laid an assessment of five per cent. on their capital stock, to be expended as provided in the preceding section, and shall have collected, from the private stockholders, seventy-five per cent. of the part of said assessment due from them, and shall have filed a certificate thereof in the office of the treasurer of the Commonwealth, signed by the directors of said corporation, scrip to the amount of two hundred thousand dollars, authorized to be issued as aforesaid, shall be delivered to the treasurer of said corporation.

And when said corporation shall have laid a further assessment of five per cent. on their capital stock, to be expended as aforesaid, and shall have collected, from the private stockholders, seventy-five per cent. of the part of said assessment due from them, and shall have filed a certificate thereof in the office of the treasurer of the Commonwealth, other scrip to the amount of two hundred thousand dollars shall be delivered to the treasurer of said corporation. And when said corporation shall have laid a further assessment of five per cent on their capital stock, to be expended as aforesaid, and shall have collected, from the private stockholders, seventy-five per cent. of the part of said further assessment due from them, and shall have filed a certificate thereof in the office of the treasurer of the Commonwealth, other scrip to the amount of two hundred thousand dollars shall be delivered to the treasurer of said corporation. And when said corporation shall have laid a further assessment of five per cent. on their capital stock, to be expended as aforesaid, and shall have collected, from the private stockholders, seventy-five per cent. of the part of said assessment due from them, and shall have filed a certificate thereof in the office of the treasurer of the Commonwealth, the residue of said scrip shall be delivered to the treasurer of said corporation.

Sect. 3. The premium or profits on the sales of said scrip shall, when received, be paid to the commissioners of the sinking fund of the Western Railroad Corporation; and after said road is opened for use, a sum equal to one per cent. on the amount of said scrip shall be annually set apart from the income of said road, and paid to the said commissioners; and the whole thereof shall be added to said

sinking fund, and be managed, invested and appropriated as is provided by law in relation thereto.

SECT. 4. This Act shall not take effect until said corporation, at an annual meeting, or at a special meeting duly notified for that purpose, shall have assented to the provisions thereof, and shall have executed to the Commonwealth a bond in such form as the attorney-general shall prescribe, conditioned that said corporation shall comply with the provisions of this Act, and shall faithfully expend the proceeds of said scrip as is herein provided, and shall indemnify and save harmless the Commonwealth from all loss or inconvenience on account of said scrip; and that said corporation shall well and truly pay the principal sum of said scrip punctually in London, when the same shall become due and payable, or such part thereof as the sinking fund aforesaid shall be sufficient to pay, and the interest thereon semi-annually in London, as the same shall fall due; and shall also reaffirm to the Commonwealth, by a suitable instrument or instruments, to be prepared for that purpose under the direction of the attorney-general, the conveyance of their entire road, with its income and all the franchise and property to them belonging, together with any interest they now have or may hereafter obtain in the Albany and West Stockbridge Railroad, or in the Hudson and Berkshire Railroad, or any agreement, lease or contract of transportation, which they now have, or may hereafter obtain from or with the Albany and West Stockbridge Railroad Company, or the Hudson and Berkshire Railroad Company, and all the rights of said corporation, under any such agreement, lease, or contract of transportation, or in and to both of said roads, whether now held, or hereafter to be procured; the whole thereof to be held by the Commonwealth, as a pledge or mortgage to secure the performance of all the conditions of said bonds, provided that the Commonwealth shall not take possession of said pledged or mortgaged property, or any part thereof, under and by virtue of said mortgage, unless for a substantial breach of some condition of said bond.

SECT. 5. In case a vacancy shall, at any time during the recess of the Legislature, exist in that portion of the board of directors to be chosen on the part of the State, the same shall be filled by the governor and council.

SECT. 6. This Act shall take effect from and after the performance of the conditions prescribed in the fourth section thereof. [*March* 18, 1841.]

The assent of the corporation was duly given to these three acts, as required therein, and the bonds and mortgages required by them were given. The following are copies of the bond and mortgage given under the first Act (Act of 1838, Chap. 9), which may stand as copies of all for the purposes of this suit. The bonds were in the form prescribed by the attorney-general of Massachusetts, and the mortgages were prepared under his direction.

COPY OF BOND.

Know all men by these Presents, that the Western Rail Road Corporation is held and stands firmly bound and obliged unto the Commonwealth of Massachusetts in the full and just sum of four millions two hundred thousand dollars, to the payment of which said sum, well and truly to be made, the Western Rail Road Corporation binds itself and its successors unto the Commonwealth of Massachusetts and its assigns firmly by these Presents.

In witness whereof, the Western Rail Road Corporation has caused its seal to be hereunto affixed, and these presents to be signed in its behalf by Josiah Quincy, Junior, its Treasurer, this 28 April, A. D. 1838.

The condition of the above obligation is such, that whereas in and by an Act of the Commonwealth of Massachusetts, approved on the 21 February, A. D. 1838, entitled "An Act to aid the construction of the Western Rail Road," it is enacted as follows: —

[*Here follows a copy of the Act as hereinbefore set out in full.*]

Now therefore, the condition of the above obligation is such, that if the said Corporation shall comply with the requisitions of this Act, and shall faithfully expend the proceeds of said scrip in the construction of their road, and shall indemnify and save harmless the Commonwealth from all loss or inconvenience on account of said scrip or certificates of debt, and if said Corporation shall and will pay the principal sum of said scrip or certificates which may be

delivered to their Treasurer, punctually in London, when the same shall become due, or such part thereof as the sinking fund aforesaid may prove insufficient to pay, and the interest thereon, semi-annually, in London, as the same shall fall due, then and on the above conditions, the foregoing obligation shall be void, but shall otherwise remain in full force and virtue.

JOSIAH QUINCY, JR.
Treasurer Western Railroad Corporation.

Executed and delivered in presence of

THOMAS B. WALES,
ELLIS GRAY LORING,
W. H. SWIFT.

[SEAL OF CORPORATION]

COPY OF MORTGAGE.

Know all men by these Presents, that the Western Rail Road Corporation, in consideration of the sum of two million one hundred thousand dollars paid, or to be paid by the Commonwealth of Massachusetts, according to the provisions of a certain Act of the said Commonwealth, approved on the twenty-first day of February, A. D. 1838, entitled "An Act to aid the Construction of the Western Rail Road," the receipt of three hundred thousand dollars whereof is hereby acknowledged, does hereby give, grant, bargain, sell and convey unto the Commonwealth of Massachusetts the entire road, franchise, and property of the Western Rail Road Corporation with the income of said road.

The intent and meaning hereof being that this conveyance shall, as against any claims or incumbrances to which the said Road, franchise, or property may be hereafter subjected, operate to cover and bind any lands included within the location of the Road, the title to which, or the Easement upon which, shall be hereafter acquired, and any additions which shall be hereafter made to said Road by labor, materials, or otherwise, and any lands hereafter purchased and appropriated for depots for said Road, or any building

or fixture placed thereon, and also any engines, cars, or other apparatus, which may be placed upon said Road, or procured therefor, as fully as if the said Road had been completed, and all the property acquired and owned by said Corporation at the time of the execution of this conveyance: *provided*, that this conveyance shall not be construed to include or affect any personal property which shall have been sold by said Corporation to a *bona fide* purchaser, before the Commonwealth shall take possession thereof under this conveyance.

To have and to hold the said entire Road, franchise, and property of said Western Rail Road Corporation to the Commonwealth of Massachusetts, and its assigns, to their use and behoof forever.

Provided, nevertheless, that whereas in and by the aforesaid Act of the Commonwealth of Massachusetts, the Treasurer of the Commonwealth is authorized and directed to issue scrip or certificates of debt in the name and in behalf of the Commonwealth, and under his signature and the seal of the Commonwealth, for the sum of two million one hundred thousand dollars, which may be expressed in the currency of Great Britain, and shall be payable to the bearer thereof in London, and bearing an interest of five per cent. per annum, payable semi-annually in London, on the first days of April and October, with warrants for the interest attached thereto, signed by the Treasurer; which scrip or certificates shall be redeemable in London at the end of thirty years from the date thereof; and in no case exceeding thirty years from the first day of April, in the year one thousand eight hundred and thirty-nine, and shall be countersigned by the Governor of the Commonwealth, and be deemed a pledge of the faith and credit of the Commonwealth for the redemption thereof; and that the Treasurer of the Commonwealth shall, under the conditions hereinafter provided, deliver the same to the Treasurer of the Western Rail Road Corporation, for the purpose of enabling said Corporation to complete the Western Rail Road.

And whereas, provision is made in said Act for the creation of a sinking fund for the future purchase or final redemption of said scrip; and whereas it is also provided that no part of said scrip shall be delivered to the Treasurer of said Corporation, until said Corpora-

tion shall have executed to the Commonwealth a Bond, in such form as the Attorney-General shall prescribe, conditioned that said Corporation shall comply with the requisitions of said Act, and shall faithfully expend the proceeds of said scrip in the construction of their road, and shall indemnify and save harmless the Commonwealth from all loss or inconvenience on account of said scrip or certificates of debt, and that said Corporation shall and will pay the principal sum of the said scrip or certificates which may be delivered to their Treasurer, punctually in London, when the same shall become due, or such part thereof as the sinking fund aforesaid may prove insufficient to pay, and the interest thereon, semi-annually, in London, as the same shall fall due; and shall also convey to the Commonwealth, by a suitable instrument, to be prepared for that purpose, under the direction of the Attorney-General, their entire road with its income, and all the franchise and property to them belonging, as a pledge or mortgage, to secure the performance of all the conditions of said Bond.

And whereas, the Western Rail Road Corporation has executed to the Commonwealth the Bond aforesaid, bearing even date herewith, now therefore if the Western Rail Road Corporation shall well and truly keep and perform the conditions of said Bond, according to their true meaning and intent, then this Deed and the Bond aforesaid shall both be void, but otherwise shall remain in full force and virtue.

And provided, also, that the Commonwealth shall not take possession of said pledged or mortgaged property, unless for a substantial breach of some condition of said bond.

And the Western Rail Road Corporation, for condition aforesaid, covenants with the Commonwealth of Massachusetts and its assigns, that the said Corporation will at any time or times hereafter, on reasonable notice and request, execute any other and further instruments or assurances that the Attorney-General of the Commonwealth for the time being shall advise to be necessary or proper to secure the Commonwealth or its assigns according to the true intent and purpose of the Act aforesaid.

In witness whereof, the Western Rail Road Corporation has caused

its seal to be hereto affixed, and these presents to be signed in its behalf by Josiah Quincy, Junior, its Treasurer, this twenty-eighth day of April, A. D. eighteen hundred and thirty-eight.

Executed and delivered in presence of

JOSIAH QUINCY, Jr.,
Treasurer W. R. R. C.

Thomas B. Wales,
Ellis Gray Loring,
W. H. Swift.

[SEAL]

Commonwealth of Massachusetts,
Suffolk, ss.

April 28, 1838.

Then personally appeared the above-named Josiah Quincy, Junior, Treasurer of the Western Rail Road Corporation, and acknowledged the above instrument to be the free act and deed of the Western Rail Road Corporation. Before me,

Ellis Gray Loring,
Justice of the Peace.

At a meeting of the Board of Directors of the Western Rail Road Corporation duly held in Boston, on the twentieth day of February, A. D. 1838,

Ellis Gray Loring was by ballot duly chosen Clerk of the Western Rail Road Corporation, and was sworn to the faithful discharge of the duty of said office.

Josiah Quincy, Junior, was by ballot duly chosen Treasurer of the Western Rail Road Corporation.

Ellis Gray Loring,
Clerk.

This mortgage was duly recorded.

Under the provisions of the foregoing acts, the Commonwealth of Massachusetts lent its aid, as provided therein, to the amount in round numbers of $4,200,000. This indebtedness became payable,

reckoning the pound sterling at $4.80 in Federal money, in London, as follows:

April 1, 1868 . . .	£135,000	$648,000
Oct. 1, 1868 . . .	337,500	1,620,000
Oct. 1, 1869 . . .	90,000	432,000
April 1, 1870 . . .	180,000	864,000
April 1, 1871 . . .	157,400	755,520
	£899,900	$4,319,520

The larger part of this amount was paid as it matured by the sinking fund provided for that purpose, and the remainder, from funds otherwise provided.

The following is a copy of one of the pieces of the sterling scrip or certificates of debt issued by the Commonwealth of Massachusetts under the Act of Feb. 21, 1838, and delivered to, and the payment thereof assumed by the Western Railroad Corporation, and also of the coupon attached thereto. The other certificates were in like form and differed only in amounts, dates, numbers, and times of payment.

Certificate for £200 Sterling

Principal due in 1868

No. 1.

UNITED STATES OF AMERICA.

FIVE PER CENT. STOCK OF THE STATE OF MASSACHUSETTS.

Be it known that there is due from the Commonwealth of Massachusetts, to the holder of this Certificate, Two Hundred Pounds Sterling, to be paid at the Banking House of Messrs. Baring Brothers & Co., in London, on the first day of October, 1868, with interest at Five Per Cent. per annum, payable at the same place, semi-annually, on presentation of the Interest Warrant.

In Testimony Whereof, the Treasurer, in behalf of the Commonwealth, by virtue of the authority in him vested by an act of the Legislature, approved the twenty-first day of February, 1838, has

hereunto set his hand and caused the seal of the Commonwealth to be affixed, at the City of Boston, this first day of October, A. D. 1838.

This Certificate is also countersigned by his Excellency the Governor.

[STATE SEAL] EDWARD EVERETT, *Governor.*
DAVID WILDER, *Treasurer.*

FIVE PER CENT. STOCK, STATE OF MASSACHUSETTS.

CERTIFICATE No. 1, £200 STERLING.

Pay the bearer Five Pounds Sterling on the first day of October, 1867, interest to that date.

D. WILDER, *Treasurer.*

The management of the sinking fund established by the Act of 1838, and the subsequent acts above referred to, was provided for by Chap. 50, of the Acts of 1839, entitled "An Act concerning the Sinking Fund of the Western Railroad Corporation," which is as follows: —

SECTION 1. The treasurer of the Commonwealth, and the treasurer of the Western Railroad Corporation, for the time being, shall be commissioners of the sinking fund of the Western Railroad Corporation.

SECT. 2. The said commissioners shall have the care and management of all the moneys, funds, and securities, at any time belonging to said sinking fund; but the moneys uninvested, and all the securities of said fund, shall be in the custody of the treasurer of the Commonwealth.

SECT. 3. Said commissioners shall, from time to time, at their discretion, invest the moneys on hand, securely, and so that they shall be productive; and the same may be loaned on interest to any county, city, or town, or any bank in this Commonwealth, or they may be loaned on interest well secured by mortgage of real estate, or by pledge of stocks of the United States, or of this State, or of

the city of Boston, or of the stocks of any railroad corporation in this State, whose road is completed, and whose original capital has been wholly paid in, and whose road and property are unincumbered. And said commissioners shall loan at least one third of said fund, on security, by mortgage of real estate, to an amount, in each case not exceeding two thirds of the value of the estate. And they may invest a part of said fund in the purchase of any of the stocks aforesaid; provided, that not more than twenty per cent. thereof shall, at any one time, be so invested in said railroad stocks, and not more than seven per cent. thereof in the stock of any one of said railroad corporations. And they may sell and transfer any stocks or securities belonging to said fund.

SECT. 4. Said commissioners shall keep a true record of all their proceedings; and they shall, annually, in the month of January, make a report to the Legislature, setting forth their proceedings for the year preceding, the amount and condition of said fund, and the income of the several parts thereof for the year; and the said record, and the securities of said fund, and the books of accounts belonging thereto, shall at all times be open to the inspection of the governor and council, or of any committee of the Legislature.

SECT. 5. This Act shall take effect from and after its passage. [*March* 13, 1839.]

TAX CLAIMED ON DIVIDEND OF STOCK UNDER VOTE OF JUNE 7, 1867.

The contributions to the above sinking fund required by law were all duly made by the Western Railroad Corporation, and afterwards by the Boston and Albany Railroad Company. On the 30th of December, A. D. 1844, the said sinking fund was $199,451, that being the amount of premium or profit on the sale of said scrip, and the accumulations thereon. On said Dec. 30, 1844, the said Western Railroad Corporation made its first payment from the earnings of the road, to the trustees of said sinking fund, said payment being $40,000, that being one per cent. of the par value of the scrip issued as aforesaid ($4,000,000); and thereafter annually, to and

including the year 1866, said Western Railroad Corporation, and for the years 1867 and 1868, the defendant corporation, in the month of December, paid to the said trustees from its earnings the sum of $40,000, as required by law. For the years 1864, 1865, 1866, 1867 and 1868, the internal revenue tax of five per cent. upon each of said payments was duly assessed, as upon profits of the corporation carried to the account of a fund, and was paid by the corporations. June 30, 1864, this sinking fund amounted to $2,182,697.17. This fund with its accumulations, independently of the payments by the Western Railroad Corporation in the years 1864, 1865 and 1866, and the accumulations thereon, amounted, June 7, 1867, to $2,765,-213.11. With the payments for these three years and the accumulations thereon, the fund was, June 7, 1867, about $2,897,213.11.

On this last-named date, June 7, 1867, the said Western Railroad Corporation passed the following vote: —

"*Voted*, that the capital stock of this corporation be increased by the issue of twenty thousand new shares, and that the treasurer be directed to distribute, on and after July 10, to the stockholders of record, at the close of business on Saturday, the eighth instant, the number of full shares to which they respectively may be entitled in proportion of three new to ten old shares. No fractional shares shall be issued, but rights to fractions of a share may be assigned, and the assignee shall be entitled to receive stock under the provisions herein stated: *Provided*, *however*, that the right to convert any fractions into stock shall cease from and after the first day of August next, and thereafter the treasurer is authorized to pay thirty dollars for each right on the original shares not converted."

This increase of the capital stock of the Western Railroad Corporation had been duly authorized by the Legislature of Massachusetts. The full number of shares authorized to be distributed by the above vote, to wit, twenty thousand shares, were so distributed. The par value of the shares of stock thus distributed was $100. The market value of such shares of said stock, as were sold, was at the time of the distribution $140 a share.

At the time of the passage of the above vote of June 7, 1867, that part of the cost of the construction of the road of the Western Railroad Corporation which had been paid for by the proceeds of the scrip of the State of Massachuaetts, issued and delivered to said corporation as aforesaid, had not been represented by stock. The Western Railroad Corporation was about to be consolidated with the

Boston and Worcester Railroad Corporation. Of the sterling scrip of the State of Massachusetts delivered to the Western Railroad Corporation as aforesaid and the payment thereof assumed by it, £135,000, equal to $648,000, were to fall due on the first of April, 1868, and £337,500, equal to $1,620,000, were to fall due on the first of October of that year. The 20,000 shares issued under the said vote were charged on the books of the Western Railroad Corporation to the "accumulated profits of the said sinking fund."

The amount of the Massachusetts sinking fund, Sept. 1, 1862, was $1,895,952.57. The amount of said fund, June 7, 1867, was $2,897,213.11; an increase of $1,001,260.54. Of this increase, a portion, to wit, $217,134.87, represents the accumulations which, between those two dates, accrued to the sum originally paid to said fund as premium or profit on the sale of said scrip. Another portion of it, to wit, $268,921.20, represents the increase, which, between those two dates, accrued to said fund from the earnings of that part of the fund that was invested in United States bonds. Another portion of it, to wit, $86,846.05, represents the increase which, between those two dates, accrued to said fund from the earnings of that part of the fund that was invested in bonds of the State of Massachusetts. Another portion of it, to wit, $114,071.33, represents the increase which, between those two dates, accrued to said fund from the earnings of that part of the fund that was invested in bonds on which the obligors paid the internal revenue tax. Another portion of it, to wit, $160,000, represents the increase which, from June 30, 1864, to June 7, 1867, accrued to said fund from payments made thereto out of the earnings of the company, and upon which an internal revenue tax of five per cent. has already been paid as upon profits of the company carried to the account of a fund.

If a tax is due upon the foregoing dividend, or upon any part of it, the rate of the tax is five per cent.

TAX CLAIMED ON DIVIDENDS OF STOCK OWNED BY THE COMMONWEALTH OF MASSACHUSETTS.

Prior to July, 1870, the defendant corporation paid the internal revenue tax upon the dividends of profits made and paid by it upon the stock owned and held by the Commonwealth of Massachusetts. From the dividend declared by it Dec. 26, 1870, the corporation

deducted $71,662, payable to the State of Massachusetts, as dividends on its stock, as not taxable. In like manner, from the dividends declared in 1871, the corporation deducted $200,960 for the same reason. From the dividend declared in 1872 (which was declared May 15, 1872, but which was wholly earned in 1871), the sum of $50,240 was deducted for the same reason. These three amounts aggregate $322,862. If all or any part of this amount is taxable, as claimed by the plaintiffs, the rate of tax thereon is two and one half per cent.

This tax of two and one half per cent. on these dividends was at the time assessed upon and collected of the defendant corporation, but upon application to that effect, the said tax was abated; and the amount collected from the corporation was paid by the United States to the Commonwealth of Massachusetts, before the institution of this suit.

TAX CLAIMED ON THE PROFITS OF THE WESTERN RAILROAD CORPORATION, AND OF THIS DEFENDANT CORPORATION, CARRIED TO THE CREDIT OF THE MASSACHUSETTS SINKING FUND.

The sinking fund, known as the Massachusetts Sinking Fund, was established, increased, controlled and managed for the purposes and by the means indicated and provided by the statutes of Massachusetts hereinbefore set forth, and by these only.

On the 30th of December, A. D. 1844, the said sinking fund was $199,451, that being the amount of premium or profit on the sale of the scrip or certificates of debt issued as hereinbefore set forth, and the accumulations thereon. On said Dec. 30, 1844, the said Western Railroad Corporation made its first payment from the earnings of the road, to the trustees of the said sinking fund, said payment being $40,000, one per cent. of the par value of the scrip or certificates of debt issued as aforesaid ($4,000,000); and thereafter annually to and including the year 1866, said Western Railroad Corporation, and for the years 1867 and 1868, the defendant corporation, in the month of December, paid to the said trustees from its earnings the sum of $40,000, as required by law. For the years 1864, 1865, 1866, 1867 and 1868, the internal revenue tax of five per cent. upon each of said payments was duly assessed as upon

profits of the corporation carried to the account of a fund, and was paid by the corporations respectively.

This fund, with its earnings and accumulations, amounted, June 30, 1864, to $2,182,697.17. There was added to this fund, as the proportion of its earnings for the year 1864 : —

Earned after June 30, 1864, the sum of . . .	$39,917 42
And as its earnings for the year 1865, the sum of .	210,300 44
And as its earnings for the year 1866, the sum of .	173,599 87
And as its earnings for the year 1867, the sum of .	196,212 02
And as its earnings for the year 1868, the sum of .	308,217 57
And as its earnings for the year 1869, the sum of .	211,860 52

No internal revenue tax for these years upon the earnings of this fund was, during the tax period, — except as below stated, — assessed upon or demanded from or paid by either corporation ; nor has such tax upon the earnings of the fund been assessed or demanded, until in connection with this suit, unless the bringing of this suit is an assessment. The tax period in this paragraph includes the time between June 30, 1864, and Dec. 31, 1871.

The exception above referred to is this : —

In September, 1869, an assessment of an internal revenue tax was made upon the earnings of the fund for 1868, $308,217.57. The defendant corporation objected to the payment of these sums, on the ground that the fund was the property of the State, and that a tax upon its earnings would be a tax on the income of the State, and upon this ground the assessment was abated by the Commissioner of Internal Revenue in January or February, 1872.

If the foregoing earnings, or any part thereof, are taxable, the rate of tax is five per cent.

The earnings of the fund for the year 1870 were $120,653.87. If they are taxable, two thirds of the amount, to wit, $80,435.92, are taxable at five per cent., being for the period from Dec. 1, 1869, to July 31, 1870 ; and one third, to wit, $40,217.95, at two and a half per cent., being for the period from Aug. 1, 1870, to Nov. 30, of the same year.

Some of the investments of said sinking fund were in bonds of the United States, in bonds of the State of Massachusetts, and in securities on which the obligor paid the tax. The earnings of the

said fund from June 30, 1864, to Dec. 31, 1869, from these classes of investments were as follows: —

From bonds of the United States	$541,207 28
From bonds of the State of Massachusetts	209,167 62
From securities on which the obligor paid the tax	133,966 00

The earnings of said fund during the year 1870, from these classes of investments, were as follows: —

From bonds of the United States	$38,232 30
From bonds of the State of Massachusetts.	3,611 87
From bonds on which the obligor paid the tax	6,027 00

Of the earnings of said fund above given, the following portions were the earnings of that part of said fund which was created by the premium above the par value of said sterling bonds, realized from the sale thereof, and the accumulations thereon, to wit: —

From June 30, 1864, to Nov. 30, 1864	$9,731 44
For the year ending Nov. 30, 1865	60,429 88
For the year ending Nov. 30, 1866	49,086 88
For the year ending Nov. 30, 1867	54,665 64
For the year ending Nov. 30, 1868	84,709 07
For the year ending Nov. 30, 1869	56,381 59
For the year ending Sept. 30, 1870	31,299 53
Total	$346,304 03

Of the earnings of said fund above given, the following amounts were the earnings of that part of said fund which had accumulated before June 30, 1864, to wit: —

From June, 30 1864, to Nov. 30, 1864	$33,264 51
For the year ending Nov. 30, 1865	206,571 65
For the year ending Nov. 30, 1866	167,800 28
For the year ending Nov. 30, 1867	186,867 79
For the year ending Nov. 30, 1868	289,567 27
For the year ending Nov. 30, 1869	192,715 59
For the year ending Sept. 30, 1870	106,992 53
	$1,183,779 62

If said sinking fund is to be deemed the property of the defendant, the annual contributions of the corporation thereto, as hereinbefore stated, are annual earnings or income of said defendant over and above all annual expenses, depreciations and losses.

TAX CLAIMED ON THE PROFITS OF THE WESTERN RAILROAD CORPORATION, AND THIS DEFENDANT CORPORATION, CARRIED TO THE CREDIT OF THE ALBANY SINKING FUND.

The city of Albany issued its bonds in aid of the construction of the road of the Albany and West Stockbridge Railroad Corporation, a corporation duly established under the laws of the State of New York; and, in accordance with the terms of the contracts, dated April 23, 1840, and June 26, 1841, under which the bonds of said city were issued, the sum of $100,000 (which was a part of the proceeds of the sale of said bonds) was paid over to trustees, to be with its accumulations a sinking fund; and said contract provided that there should be paid annually to said trustees a sum equal to one per cent. of the par value of the bonds as issued by said city, which sums, being $10,000, annually, with the accumulations thereon, should be a part of said sinking fund. Copies of the said contracts are annexed hereto, as Exhibits A and B, and may be referred to as part hereof.

Jan. 1, 1844, the value of said sinking fund was $120,500.78, and was made up wholly of the proceeds of the sales of said bonds and accumulations.

After making the aforesaid contract with the city of Albany, under which said bonds were issued, to wit, on the 18th November, A. D. 1841, the said Albany and West Stockbridge Railroad Company, by indenture, leased its road to the Western Railroad Corporation, and in said indenture the said Western Railroad Corporation agreed to pay as rent under said lease the interest on the said bonds as the same should fall due. Said lease was by its terms made subject to a mortgage of said road and its equipments to the city of Albany to secure payment of said bonds issued by said city, of the par value of $1,000,000; and the said Western Railroad Corporation, as a part of the consideration of said lease, undertook therein, after applying to the payment of said bonds the proceeds of said sinking fund, to pay any balance thereof, as the same should become due and payable.

Copies of the said lease and mortgage are annexed hereto as Exhibits C and D, and may be referred to as part hereof.

The value of the said Albany Sinking Fund June 30, 1864, was $865,480 52

There was carried to this fund as the proportion of its earnings for the year 1864, earned after June 30, 1864, the sum of		$21,604 32
And as its earnings for the year 1865, the sum of .		38,993 04
And as its earnings for the year 1866, the sum of .		52,263 98
And as its earnings for the year 1867, the sum of .		41,095 95
And as its earnings for the year 1868, the sum of .		34,266 25
And as its earnings for the year 1869, the sum of .		29,753 39
The only other additions to said sinking fund prior to 1870 were three annual contributions of $10,000 each from its earnings by said Western Railroad Corporation, on the 30th of November, in the years 1864, 1865 and 1866 .	$30,000 00	
And the accumulations thereon .	6,010 25	
		36,010 25
		$253,987 18

If the foregoing earnings of the said sinking fund, or any part thereof, are taxable, the rate of tax is five per cent.

The earnings of the fund for 1870 were $36,943.88. If this amount, or any part thereof, is taxable, two thirds of whatever thereof is found to be taxable would pay a tax of five per cent., and the other third would pay a tax of two and one half per cent.

The earnings (subsequent to June 30, 1864) of that part of the Albany Sinking Fund which had accumulated before June 30, 1864, were as follows: —

From June 30, 1864, to Nov. 30, 1864 . . .	$21,604 32
For the year ending Nov. 30, 1865 . . .	38,558 38
For the year ending Nov. 30, 1866 . . .	51,135 12
For the year ending Nov. 30, 1867 . . .	39,807 71
For the year ending Nov. 30, 1868 . . .	33,193 64
For the year ending Nov. 30, 1869 . . .	28,822 04
For the year ending Sept. 30, 1870 . . .	35,787 40

A part of the foregoing earnings of the said Albany Sinking Fund, to wit, the sum of $2,300, was the interest of United States bonds then forming part of said fund. Another portion of the foregoing earnings, to wit, the sum of $3,161.21, was the income from or the interest on bonds then forming part of said fund on which the revenue tax was paid by the obligors.

If said sinking fund is to be deemed the property of the defendant, the annual contributions by the corporation thereto, as hereinbefore stated, are annual earnings or income of said defendant over and above all annual expenses, depreciations and losses.

TAX CLAIMED UPON THE INTEREST PAID FROM ITS EARNINGS BY THE WESTERN RAILROAD CORPORATION AND BY THIS DEFENDANT, ON THE STERLING SCRIP AND COUPONS NAMED IN THE BOND AND MORTGAGE OF THE WESTERN RAILROAD CORPORATION.

Under the provisions of the statutes of Massachusetts, hereinbefore set out, granting the aid of the State to the Western Railroad Corporation, the said corporation having duly assented to those statutes, and having given the bonds and mortgages required by said statutes as a condition precedent to the delivery thereof to it by the State, the State delivered to the said corporation from time to time, as provided by said statutes, sterling scrip or certificates of debt to the amount of eight hundred ninety-nine thousand and nine hundred (£899,900) pounds sterling, or $4,319,520, reckoning the pound sterling at $4.80 Federal currency; which money the said corporation received and expended in the construction and equipment of its road; and it and its successor, this defendant, as provided in said bonds and mortgages, paid from its earnings the coupons of interest on said scrip, as the said interest accrued semi-annually, and also paid the principal of said debt as it matured.

The interest on said scrip accruing, payable and paid, after Sept. 30, 1862, and before June 30, 1864, from the earnings of said corporation amounted to $431,9 2; of which sum $57,592 were due and paid to holders of said scrip, residents within the United States. On this last-named amount ($57,592), the Western Railroad Corporation paid the internal revenue tax of three per cent. Upon the remainder of that sum ($431,952), to wit, on $374,360, no internal revenue tax has been paid. If such tax was or is payable thereon, the rate of said tax is three per cent., and the amount thereof is $11,230.80.

The interest on said scrip accruing or payable after June 30, 1864, and before Sept. 30, 1870, and paid from the earnings of said corporation, amounted to $1,111,348. Of this sum, $178,478 was due to holders of said scrip, residents within the United States, and on said sum ($178,478) the Western Railroad Corporation, or this defendant, paid the internal revenue tax of five per cent. Upon the remainder of said whole amount ($1,111,348), after deducting said $178,478, to wit, upon $932,870, no internal revenue tax has been paid. If any such tax was or is payable, the rate of said tax is five per cent., and the amount thereof is $46,643.50.

The interest on said scrip accruing or payable after June 30, 1864, and before March 10, 1866, and paid from the earnings of said corporation, amounted to $323,964; of this sum, $49,860 was due to holders of said scrip resident within the United States, and on said sum the Western Railroad Corporation or this defendant paid the internal revenue tax of five per cent.; upon the remainder of said whole amount ($323,964), after deducting said $49,860, to wit, upon $274,104, no internal revenue tax has been paid; if any such tax was or is payable, the rate of said tax is five per cent., and the amount thereof is $13,705.20.

The interest on said scrip accruing or payable after March 10, 1866, and before Sept. 30, 1870, and paid from the earnings of said corporation, amounted to $774,792; of this sum, $135,885.12 was due to holders of said scrip resident within the United States, and on said sum the Western Railroad Corporation or this defendant paid the internal revenue tax of five per cent.; upon the remainder of said whole amount ($774,792), after deducting said $135,885.12, to wit, upon $642,990, no internal revenue tax has been paid; if any such tax was or is payable, the rate of said tax is five per cent., and the amount is $32,149.50.

The interest on said scrip accruing or payable after Sept. 30, 1870, and prior to Dec. 31, 1871, and paid from the earnings of said corporation, amounted to the sum of $25,184, on no part of which has any internal revenue tax been paid. If any such tax was or is payable thereon, the rate of said tax is two and one half per cent., and the tax due thereon is $629.60.

The several amounts of taxes claimed as due from the defendant to the plaintiffs, in the several counts of the amended declaration, were demanded of the defendant corporation on the 27th of December, A. D. 1880, by the collector of internal revenue, of the Third Massachusetts Internal Revenue District, in which district the principal business offices of the said defendant corporation were and are situate, the said collector in so doing acting under instructions to that effect from the commissioner of internal revenue, but the said corporation refused and still refuses to pay the same or any part thereof.

THE UNITED STATES OF AMERICA, *Plaintiffs*,
by RICHARD OLNEY, *Special U. S. Attorney*.

THE BOSTON AND ALBANY RAILROAD COMPANY,
by A. L. SOULE, *its Attorney*.

TAX CLAIMED UPON THE INTEREST PAID FROM ITS EARNINGS BY THE WESTERN RAILROAD CORPORATION AND BY THIS DEFENDANT, ON THE STERLING SCRIP AND COUPONS NAMED IN THE BOND AND MORTGAGE OF THE WESTERN RAILROAD CORPORATION.

Under the provisions of the statutes of Massachusetts, hereinbefore set out, granting the aid of the State to the Western Railroad Corporation, the said corporation having duly assented to those statutes, and having given the bonds and mortgages required by said statutes as a condition precedent to the delivery thereof to it by the State, the State delivered to the said corporation from time to time, as provided by said statutes, sterling scrip or certificates of debt to the amount of eight hundred ninety-nine thousand and nine hundred (£899,900) pounds sterling, or $4,319,520, reckoning the pound sterling at $4.80 Federal currency; which money the said corporation received and expended in the construction and equipment of its road; and it and its successor, this defendant, as provided in said bonds and mortgages, paid from its earnings the coupons of interest on said scrip, as the said interest accrued semi-annually, and also paid the principal of said debt as it matured.

The interest on said scrip accruing, payable and paid, after Sept. 30, 1862, and before June 30, 1864, from the earnings of said corporation amounted to $431,9 2; of which sum $57,592 were due and paid to holders of said scrip, residents within the United States. On this last-named amount ($57,592), the Western Railroad Corporation paid the internal revenue tax of three per cent. Upon the remainder of that sum ($431,952), to wit, on $374,360, no internal revenue tax has been paid. If such tax was or is payable thereon, the rate of said tax is three per cent., and the amount thereof is $11,230.80.

The interest on said scrip accruing or payable after June 30, 1864, and before Sept. 30, 1870, and paid from the earnings of said corporation, amounted to $1,111,348. Of this sum, $178,478 was due to holders of said scrip, residents within the United States, and on said sum ($178,478) the Western Railroad Corporation, of this defendant, paid the internal revenue tax of five per cent. Upon the remainder of said whole amount ($1,111,348), after deducting said $178,478, to wit, upon $932,870, no internal revenue tax has been paid. If any such tax was or is payable, the rate of said tax is five per cent., and the amount thereof is $46,643.50.

The interest on said scrip accruing or payable after June 30, 1864, and before March 10, 1866, and paid from the earnings of said corporation, amounted to $323,964; of this sum, $49,860 was due to holders of said scrip resident within the United States, and on said sum the Western Railroad Corporation or this defendant paid the internal revenue tax of five per cent.; upon the remainder of said whole amount ($323,964), after deducting said $49,860, to wit, upon $274,104, no internal revenue tax has been paid; if any such tax was or is payable, the rate of said tax is five per cent., and the amount thereof is $13,705.20.

The interest on said scrip accruing or payable after March 10, 1866, and before Sept. 30, 1870, and paid from the earnings of said corporation, amounted to $774,792; of this sum, $135,885.12 was due to holders of said scrip resident within the United States, and on said sum the Western Railroad Corporation or this defendant paid the internal revenue tax of five per cent.; upon the remainder of said whole amount ($774,792), after deducting said $135,885.12, to wit, upon $642,990, no internal revenue tax has been paid; if any such tax was or is payable, the rate of said tax is five per cent., and the amount is $32,149.50.

The interest on said scrip accruing or payable after Sept. 30, 1870, and prior to Dec. 31, 1871, and paid from the earnings of said corporation, amounted to the sum of $25,184, on no part of which has any internal revenue tax been paid. If any such tax was or is payable thereon, the rate of said tax is two and one half per cent., and the tax due thereon is $629.60.

The several amounts of taxes claimed as due from the defendant to the plaintiffs, in the several counts of the amended declaration, were demanded of the defendant corporation on the 27th of December, A. D. 1880, by the collector of internal revenue, of the Third Massachusetts Internal Revenue District, in which district the principal business offices of the said defendant corporation were and are situate, the said collector in so doing acting under instructions to that effect from the commissioner of internal revenue, but the said corporation refused and still refuses to pay the same or any part thereof.

THE UNITED STATES OF AMERICA, *Plaintiffs*,
by RICHARD OLNEY, *Special U. S. Attorney.*

THE BOSTON AND ALBANY RAILROAD COMPANY,
by A. L. SOULE, *its Attorney.*

EXHIBIT A.

These articles of agreement, made this twenty-third day of April, in the year of our Lord one thousand eight hundred and forty, by and between the Mayor, Aldermen and Commonalty of the city of Albany, of the first part, the Albany & West Stockbridge Railroad Company, a corporation established in the State of New York, of the second part, and the Western Railroad Corporation, a corporation established in the State of Massachusetts, of the third part, witness : —

That whereas, the Western Railroad is rapidly advancing to its completion, and it is deemed highly important to the interests of all the parties hereto, and as well to the interests of Massachusetts as to those of the western and northern parts of the State of New York, that a continuous line of railroad be formed as soon as may be from Boston to Albany, now the parties hereto do hereby agree as follows, viz. : —

The said party of the first part hereby agree to subscribe forthwith to the capital stock of the said Albany & West Stockbridge Railroad Company the sum of $650,000, or to subscribe for such part thereof as is not already subscribed for by responsible persons as will make up said sum, and to procure and take a transfer of such part of said stock as has been heretofore subscribed by individuals, excepting so much thereof as may be necessary for the purpose of preserving and continuing the legal organization and corporate powers of said company, and the said party of the first part further agree that they will pay the said sum of $650,000, or such part thereof as may be necessary to construct and put in operation the said Albany & West Stockbridge Railroad, by issuing therefor the bonds or scrip of the city of Albany, payable to bearer in thirty years from date thereof, with interest at the rate of six per cent. per annum, payable semi-annually on the first days of January and July, the principal and interest to be payable at the office of the Western Railroad Corporation in Boston, in the State of Massachusetts, with warrants for the interest attached thereto, and will from time to time deliver the said bonds or scrip to the party of the third part for the purpose of constructing the said railroad and in such sums as they shall require, the same to be issued seasonably, to be converted for use in paying for the expenditures upon said road and the materials therefor; provided that no larger sum than $100,000 shall be required at one

time, and after the first $100,000 shall be issued, no further issue shall be required until reasonable proof is furnished by the party of the third part to the Mayor of the said city of Albany that at least $50,000 of the previous issue of $100,000 has been expended upon said road or for the materials therefor.

And the said party of the first part further agree that no charge shall be made to the said party of the third part for the right and privilege, at their own cost and expense, to convey across the Hudson River at Albany the passengers and freight transported or to be transported upon said railroad, or the officers, agents and servants of said party of the third part, or their engines, cars or other property.

And the said party of the second part hereby agree that they will entrust to the party of the third part the care and management of the location and construction of said railroad, and will at all times authorize and empower them and their agents and servants to do everything proper and necessary therefor, as fully as the said party of the second part might do under their charter and the additions thereto; that they will at all times hereafter continue and preserve the legal organization of said Albany & West Stockbridge Railroad Company, and will appoint all such officers as the said party of the third part shall designate for the location, construction and management of said road, with power to execute such contracts, deeds and other instruments as may be necessary therefor, and will hold meetings, pass votes and do all such other acts as may be necessary and proper to carry into full effect the objects of this agreement; and in case the said party of the third part shall make a contract of transportation with the Hudson & Berkshire Railroad Company for the hiring and use or purchase of any part of their road, and shall elect to have the same done in the name of the said party of the second part, the same may be so done for the sole use and benefit of the said party of the third part, it being understood that, if the same shall be so done, the part of said road so hired or purchased shall, for the time being, be considered as substituted for the corresponding part of the road authorized to be constructed by the said party of the second part and form part of the said Albany & West Stockbridge Railroad as fully as if made by said party of the second part.

And the said party of the second part further agree that during the continuance of their charter or any renewal, renewals or exten-

sion of the same, the party of the third part shall have the exclusive control of and right of transportation over said road as fully as the party of the second part could have under their charter including the part of said Hudson and Berkshire Road so hired or purchased, and that the said party of the second part, on request of said party of the third part, will execute to them or to such persons as they shall designate, such leases, contracts of transportation or other conveyances as may from time to time be necessary and proper to secure the object of these provisions; the same to be prepared by and at the expense of the said party of the third part, it being understood in all the foregoing proceedings the said party of the second part and their officers shall be held harmless from any liability and indemnify against the same by said party of the third part.

And the said party of the third part hereby agree that they will proceed as early as may be conveniently done and construct and open the said road for use, and provide and run the same for the accommodation of the public, and that they will faithfully apply all moneys which they shall receive from the avails of said bonds or scrip to the survey and purchase of necessary lands and for the construction of said road and fitting the same for use, excepting, however, such part as may be necessary to pay the interest on said bonds for one year from the time when the construction of the road shall be commenced and the sum of ten per cent. thereon hereafter provided to be paid to a sinking fund. It being understood that, if a part of said Hudson & Berkshire Railroad shall be leased or assigned, as hereinbefore provided, the same shall be considered an equivalent for the construction of a corresponding portion of said Albany & West Stockbridge Railroad, and the sums paid therefor be held as part of the expense of the construction thereof within the meaning of the foregoing provisions. Provided, however, that the bonds of the said party of the first part shall not be applied to the purchase of the said Hudson & Berkshire Railroad until the Albany & West Stockbridge Railroad be first constructed by the said party of the third part, fit and ready for use between the city of Albany and the point of union with the said Hudson & Berkshire Road. And the said party of the third part further agree that as a rent or compensation for the use of said road, they will punctually pay the interest on such bonds as may be issued in pursuance hereof according to the tenor thereof, as the same shall fall due, and that they will assume all risks of loss upon said bonds, receiving all profits arising therefrom.

And it is hereby agreed by the parties that the chamberlain of the said city of Albany, for the time being, and such person as shall from time to time be named in writing by said party of the third part therefor, shall be the trustees of the sinking fund hereafter provided for. And the said party of the third part hereby agree that they will pay the said trustees ten per cent. on said bonds as they shall receive the same, and annually after said road shall be opened for use will pay also to said trustees the amount of one per cent. upon the whole of the bonds which shall have been so issued; and the sum so received by said trustees, and the interest or profit annually accruing thereon, shall be by them from time to time securely invested in bonds and mortgages on real estate in said city of Albany, or in stocks of either of the States of New York or Massachusetts, and the same with the income thereof shall constitute a sinking fund for the future purchase or final redemption of said bonds or scrip; provided, that when a sufficient sum shall have been thus realized to pay the amount due on said bonds, the said annual payments of one per cent. shall cease, and all the interest thereafter accruing on said sinking fund shall be paid over to said party of the third part, excepting, however, any part thereof which may at any time be necessary to make up any losses accruing upon the principal of said fund and any current expenses of the same; and, provided further, that the said party of the third part shall have the right at any time to purchase and surrender to said party of the first part any portion of said bonds or scrip; and thereupon the said party of the third part shall be entitled to receive from said party of the first part a transfer to them, or such person or persons as they shall designate, of an equal amount at par value of the shares in the capital stock of said Albany & West Stockbridge Company, and the said annual payment of one per cent. to the sinking fund shall be reduced in the same proportion. And if, by said purchase and surrender of bonds or scrip, the said sinking fund shall be more than sufficient to pay the balance of the bonds or scrip outstanding, the said surplus shall be paid over to the said party of the third part, and when said bond shall fall due, the said sinking fund, or such part thereof as may be necessary therefor, shall be applied to their

payment; and when the whole of said bonds shall have been paid and surrendered, such part of the sinking fund as shall remain, if any, shall be paid over to said party of the third part, and the said party of the first part shall transfer, or cause to be transferred, to the said party of third part the whole of the residue of the shares in the capital stock of said company, and so *pro rata* for any portion of said bonds which shall be so paid and surrendered.

And it is further agreed and provided that the said trustees shall annually, on the first day of December, transmit to the parties of the first and third parts detailed statements of their proceedings in relation to said sinking fund for the year preceding, with a statement of their accounts and a schedule of all the securities held by them, with the income of the several parts thereof for the year, and the books of account of said trustees and the securities of said fund shall at all times be open to the inspection of committees appointed by the said party of the first part, or said party of the third part.

And the said party of the third part further agree that if they shall at any time neglect to pay the interest on said bonds punctually, as it shall fall due, the said parties of the first or second part may enter upon and take possession of said road, the appurtenances and equipments on the same, and use them and receive the profits thereof in trust, until all arrears of interest shall be paid, and the party of the third part shall be liable for any deficiency. And the said party of the third part also agree that, if the New York and Albany Railroad shall be hereafter constructed so far as to unite the same with the Albany & West Stockbridge Railroad, the party of the third part will, at their option, either allow the New York and Albany Railroad Company to use the Albany & West Stockbridge Railroad, with their engines and cars, paying for such use a reasonable sum, or will transport the passengers and merchandise of the said New York and Albany Railroad over said Albany & West Stockbridge Railroad, on as favorable terms as the average of those upon which passengers and similar merchandise are for the time being transported over the railroad between Worcester and said point of junction with the New York & Albany Railroad, and without unreasonable delay. And in case of any disagreement in executing these provisions, the matter in issue shall be decided by

three commissioners, to be appointed by the chancellor of the State of New York, and the party of the third part reserve the right at any time to discharge the trustee of the sinking fund appointed by them, and to appoint another in his stead.

And in order to preserve the organization and corporate powers of the said Albany and Stockbridge Railroad Company, as hereinbefore provided, it is agreed by the parties that such number of the shares of the stock of said company as shall be necessary therefor shall, from time to time, by the procurement and appointment of said party of the first part, be held by individuals to be named and designated by the said party of the third part, in trust for the benefit of said party of the first part, and such shares shall be subject to all provisions herein stipulated for in relation to shares held directly by said party of the first part, and be eventually transferred to said party of the third part on the same conditions and contingencies.

And the said party of the third part further agree that they will not run their locomotive engines north of the village of Greenbush, or the city of Albany, without the consent of the party of the first part, and that they will assume and pay the reasonable expenses heretofore incurred by the party of the second part for the preliminary surveys for said road, and for the salaries of officers and other general expenses of said Albany and West Stockbridge Railroad Company in prosecuting the object of their incorporation, and in case of disagreement the parties shall abide by the decision of three commissioners to be appointed by the chancellor of the State of New York.

And the party of the first part agree to give their consent and approbation for the construction by the said party of the third part of one or more depots within the city of Albany, and to connect the same with said Albany & West Stockbridge Railroad by a single or double track with suitable turnouts and branches, upon the terms and conditions prescribed in the Act giving such authority, passed on the thirteenth day of April, A. D. 1840.

And it is agreed that this contract shall not take full effect until it shall be ratified by vote of the board of directors of the Western Railroad Corporation.

In witness whereof, the Mayor of the said city of Albany hath,

pursuant to a resolution on the common council of said city, to this and two other instruments of even tenor and date set his hand, and caused the seal of said city to be affixed. And the said Albany and West Stockbridge Railroad Company, by Stephen Van Rensselaer, their president, and the said Western Railroad Corporation, by George Bliss, their agent thereto, duly authorized by the said companies, respectfully have to the same instruments set their hands and caused their respective corporate seals to be affixed thereto the day and year first above mentioned, each party having a part.

Signed, sealed and delivered
in presence of

JARED L. RATHBONE, [SEAL]
Mayor of the city of Albany.

S. V. RENSSELAER *Pres't*
[SEAL] *Albany & West Stockbridge R. Road Company.*

THE WESTERN RAILROAD CORPOR'N,
By GEO. BLISS, *Ag't.* [SEAL]

EXHIBIT B.

These articles of agreement, made this twenty-sixth day of June, in the year one thousand eight hundred and forty-one, by and between the Mayor, Aldermen and Commonalty of the city of Albany, of the first part, the Albany and West Stockbridge Railroad Company, of the second part, and the Western Railroad Corporation of the third part, witness: —

That whereas, by articles of agreement heretofore made between the parties hereto, bearing date the twenty-third day of April, in the year one thousand eight hundred and forty, the said party of the first part agreed to subscribe to the capital stock of the said Albany and West Stockbridge Railroad Company the sum of six hundred and fifty thousand dollars, and to pay the said sum in bonds or scrip of the city of Albany of the tenor and in the manner particularly set forth in said articles; and whereas, in and by said articles of agreement, the said party of the second part agreed to entrust to the party

of the third part the management of the location and construction of the Albany and West Stockbridge Railroad, and to permit the said party of the third part, during the continuance of the charter of the party of the second part, or any renewal or extension of the same, to have the exclusive control of and rights of transportation over said road; and execute to said party of the third part, or such persons as they should designate, such leases, contracts of transportation or other conveyances as might be necessary to secure those objects; and to permit and authorize other things necessary and proper therefor, as in said articles particularly set forth. And whereas, said party of the third part, in and by said articles, agreed to construct and open the said road for use, and to provide and run the same for the accommodation of the public; to apply the proceeds of said bonds to the construction of said road, and to the sinking fund provided for by said articles, in the proportions and in the manner therein set forth; to pay as a rent for the use of said road the interest on the said bonds punctually, as the same should fall due, and to pay to the trustees of said sinking fund, annually, after the said road should be opened for use, one per cent. upon the whole amount of said bonds. And whereas, in and by said articles, provision was made, among other things, for the investment, security and management of said fund, and for the application and payment of the same and the proceeds thereof, for the purchase and surrender of said bonds and for the transfer to the said party of the third part of the shares in said capital stock so subscribed by them. And whereas, in and by said articles, provision was further made for preserving the organization and corporate powers of the said Albany and West Stockbridge Railroad Company, and also to restrain the party of the third part from running their locomotive engines north of the village of Greenbush, or of the city of Albany, for the appointment of officers of said company, and for the power to execute such contracts, deeds, and other instruments as might be necessary for the location, construction, and management of said road, and for holding meetings, passing votes and doing such other acts as might be needful and proper therefor. And whereas, it is now deemed necessary and expedient to construct the said railroad in a more du

rable and expensive manner than was originally contemplated and also to make a new, independent and substantial road throughout the whole distance from Albany to the line of the State of Massachusetts, instead of using a portion of the Hudson & Berkshire Railroad, as was in said former articles provided;

Therefore, the said party of the first part hereby agree to suscribe forthwith to the capital stock of said Albany and West Stockbridge Railroad Company the further sum of three hundred and fifty thousand dollars, and to pay the said sum by issuing therefor the bonds or scrip of the city of Albany, payable to bearer, at the times hereinafter specified, with interest at the rate of six per cent. per annum, payable semi-annually on the first days of January and July, the principal and interest to be payable at the office of the Western Railroad Corporation in Boston, with warrants for the interest attached thereto, the same to be delivered to the party of the third part, for the purpose, in the manner and at the times specified in said former articles of agreement, as to the bonds of said city therein provided to be issued.

And the said party of the second part hereby agree that all the provisions of said former articles of agreement on their part to be performed, and all agreements by them therein made, shall be operative and binding upon them, as to the said sum of three hundred and fifty thousand dollars, as fully as if the same were herein recited and set forth, or as if the said sum had been included in said original articles, except so far as the same may be altered hereby.

And the said party of the third part hereby agree that all the provisions of said former articles on their part to be performed, and all agreements by them therein made, shall be operative and binding upon them as to the said additional sum of three hundred and fifty thousand dollars, as fully as if the same were herein recited and set forth, or as if the said sum had been included in said former articles, except so far as the same may be altered hereby; and particularly that they will proceed as early as may be conveniently done, and construct and open for use the whole of the said railroad from the Hudson River to the line of the State of Massachusetts, independently of the Hudson & Berkshire Railroad, and will provide and run the same for the accommodation of the public; that they will

faithfully apply the proceeds of said bonds to the construction of said road and the purchase of lands and materials therefor and to the said sinking fund, and that they will punctually pay the interest thereon, and one per cent. annually on the amount of said bonds, to the said sinking fund, in the same manner and upon the same terms and conditions as are provided and specified in said former articles of agreement as to the bonds therein authorized to be issued and the sinking fund thereby created.

And the said party of the first part hereby further agrees that the whole of the bonds authorized by the said former articles, and by these articles of agreement, amounting to one million of dollars, shall be made payable at the following times, to wit, two hundred and fifty thousand dollars thereof in twenty-five years from the date thereof; five hundred thousand dollars (including those heretofore issued) in thirty years from the date thereof, and two hundred and fifty thousand dollars in thirty-five years from the date thereof.

And the said party of the second part further agree that they will, in a reasonable time after demand therefor, execute and deliver to said party of the first part a mortgage of their entire road, including the road bed, buildings, depots, and other fixtures, conditioned to indemnify and save the said party of the first part harmless from all eventual liability for the payments of the principal of the whole or any part of said bonds of one million dollars, or the interest from time to time accruing thereon, or any part thereof, and from all loss, trouble or injury on account thereof. And that when their entire road shall be located, in due form of law, they will, if thereto requested by the party of the first part, execute to them an additional mortgage thereof, and of such additions and fixtures as shall be then made thereto, as further security for the payment of said bonds and the interest thereon; provided, however, that said party of the first part shall not enter upon or take possession of any of said mortgaged property except for some substantial breach of the conditions of said mortgages, and some loss or injury arising therefrom.

And the said party of the third part hereby agree that they will establish and maintain and use a permanent depot for said road, within the city of Albany, as authorized by an Act of the Legislature

passed April thirteenth, in the year one thousand eight hundred and forty.

And it is further agreed by and between the parties hereto, that the party of the third part may run their locomotive engines to any point to which the said Albany and West Stockbridge Railroad may be constructed, under their charter and the acts in addition thereto; provided, the same shall strike the Hudson River, not farther south than a point opposite to Ferry Street, and not farther north than a point opposite to Lumber Street; and that the sinking fund provided for in said former articles and these articles of agreement shall be and form one entire sinking fund to all intents and purposes, and as fully as if the whole had been provided for in and created under said former articles; and that the provisions, conditions and limitations contained in said former articles, in relation to the appointment or removal of the trustees of said fund, the rendition of their accounts, the exhibition of their books and securities, the care, investment and security of said fund and its income, the annual payments to the same of one per cent. upon the amount of said bonds, the eventual appropriation and payment of said fund, the purchase and surrender of said bonds, the transfer of the shares in the capital stock of said Albany and West Stockbridge Railroad Company, and in relation to any other matters concerning the same, shall be applicable to and be in full force upon the whole of said fund, as fully as if the whole thereof had been provided for under one agreement; provided that, in addition to the loans and securities authorized by said former articles, the said trustees may, from time to time, invest such parts of said fund as they may judge expedient in loans upon the collateral security of the stocks of the States of New York or Massachusetts, and in the bonds of the city of Albany above mentioned, or in loans upon the collateral security of the same.

In witness whereof, the Mayor of the said city of Albany hath, pursuant to a resolution of the Common Council, to this and two other instruments of even tenor and date, set his hand, and caused the seal of said city to be affixed; and the said Albany and West Stockbridge Railroad Company, by Marcus T. Reynolds, their president, and the said Western Railroad Corporation, by George Bliss, their

agent, thereto duly authorized by the said companies respectively, have to the same instruments set their hands and caused their respective corporate seals to be affixed thereto, the day and year first above mentioned, each party having a part.

TENNIS VAN VECHTER, *Mayor.* [SEAL]

[SEAL] MARCUS T. REYNOLDS,
Pres't of the Alb. & W. S. Railroad.

[SEAL] THE WESTERN RAILROAD CORPORATION.
By GEORGE BLISS, *Agent.*

EXHIBIT C.

WESTERN RAILROAD CORPORATION.

COPY OF PERMANENT CONTRACT OF TRANSPORTATION WITH THE ALBANY AND WEST STOCKBRIDGE RAILROAD COMPANY.

This indenture and contract of transportation, made this eighteenth day of November, in the year one thousand eight hundred and forty-one, by and between the Albany and West Stockbridge Railroad Company, a corporation established in the State of New York, of the first part, and the Western Railroad Corporation, a corporation established in the State of Massachusetts, of the second part, witnesseth: —

That, whereas the railroads constructed and now constructing, under the respective charters of the parties hereto, within the said States of Massachusetts and New York, form a junction with each other at the dividing line between the said States, and at the western boundary of the town of West Stockbridge; and whereas, it has been heretofore agreed between the parties hereto, and the mayor, aldermen, and commonalty of the city of Albany, that the party of the second part should, under the charter and by the direction of the officers of the party of the first part, construct and open for use the said Albany and West Stockbridge Railroad, and that the said mayor, aldermen and commonalty should issue and deliver to the party of the second part the bonds or scrip of the city of Albany to the

amount of one million of dollars, to aid in the construction of said road; and which bonds should be made payable, one quarter part thereof in amount in twenty-five years, and one half part thereof in thirty years, and the residue in thirty-five years from the dates thereof, respectively, with interest at the rate of six per cent. per annum, payable semi-annually on the first days of January and July, the principal and interest to be payable at the office of the party of the second part in Boston, in the State of Massachusetts; and whereas it has been further agreed by and between the parties hereto, that during the continuance of the charter of the party of the first part, or any renewal or extension of the same, the party of the second part should have the exclusive control of and right of transportation over said road, and that the party of the first part should execute to the party of the second part such leases, contracts of transportation, or other conveyances, from time to time, as might be necessary and proper to secure the said objects; and that said party of the second part should provide and run the said road for the accommodation of the public, and as a rent or compensation for the use thereof, should punctually pay the interest on the said bonds according to the tenor thereof.

Therefore, in order to carry into full effect all the contracts, agreements, and stipulations aforesaid, the said party of the first part, in consideration of the premises, and of the covenants of the party of the second part hereinafter contained, as well as of ten dollars paid by said party of the second part, do by these presents, grant, lease and demise unto the said party of the second part, their successors and assigns, the whole of the said Albany and West Stockbridge Railroad, extending from any part of the city of Albany to the line of the State of Massachusetts, as the same is now located, or shall be hereafter located and constructed, together with all the lands, depots, buildings, tracks, fixtures, property, rights, privileges and franchises thereto appertaining and belonging, or which may hereafter be procured or purchased by, or be granted, appertain or belong to the said road, or to the said Albany and West Stockbridge Railroad Company, with the full right and privilege of using the said road, depots and other property, and rights with cars, engines, or other motive power, or to permit and authorize others so to use the same, in any

way which the said party of the second part, their succe-sors or assigns may from time to time elect; and as fully and freely as the said party of the first part might or could do under their charter, and the additions thereto, to have and to hold the said railroad, as the same is now located, or shall be hereafter located and constructed, and all the said lands, depots, and other property, rights, privileges and franchises, whether now acquired or hereafter to be procured unto the said party of the second part, their successors and assigns, for and during the full term of the continuance of the charter of the party of the first part, and any renewals or extensions of the same, and as fully and freely, to all intents and purposes, as the said party of the first part might or could have, enjoy and use the same under their charter, and the additions thereto and renewals of the same; subject, however, to a mortgage of the said road, lands, depots and other property and rights heretofore made by the party of the first part, to the said mayor, aldermen and commonalty of the city of Albany, to secure the final payment of the said bonds of one million of dollars and the interest thereon from time to time accruing, which said mortgage bears date the twenty-eighth day of June, in the year one thousand eight hundred and forty one; and subject also to any future mortgage of the said premises by the party of the first part to the said mayor, aldermen and commonalty, pursuant to articles of agreement between them and the party of the second part, bearing date the twenty-sixth day of June, in the year one thousand eight hundred and forty-one.

And to enable the said party of the second part beneficially to enjoy and improve the said granted property, rights and privileges, the said party of the first part hereby nominate, constitute and appoint the said party of the second part their attorneys irrevocable, with full power and authority to use the name of the party of the first part in and about the construction, repair, management and running of the said Albany and West Stockbridge Railroad, and all the property, rights, privileges and franchises which may now, or at any future time, appertain or belong thereto; with the right and power to establish, receive and collect tolls, fares, rates of compensation and rents for the use of said road and other property, or for the transportation of persons, merchandise, mails and every

description of property upon and over said road, and any part thereof, for the sole use and benefit of the said party of the second part, their successors and assigns; and to make any contracts, covenants or agreements proper and necessary for all the purposes herein provided for, with any persons or corporations whatever in the name of the party of the first part, and under their corporate seal or otherwise. And generally to do and perform all other acts and things in the premises which the said party of the first part might lawfully do; with full power and authority also to use the name of the party of the first part in and about any proceedings at law or in equity, which the said party of the second part may judge necessary or expedient in and about all the business and proceedings aforesaid, or for the purpose of fully securing to the said party of the second part, their successors and assigns, the quiet and beneficial enjoyment, possession and use of the said road and of all the property, rights, privileges, and franchises hereby granted, secured and demised, or for any other purpose consistent with the true intent and meaning of this indenture; and with the right, for all the purposes aforesaid, from time to time, to substitute and appoint one or more attorneys under the said party of the second part, and the same at pleasure to revoke.

And the said party of the first part hereby covenant and agree with the said party of the second part, their successors and assigns, that they will, during the term in which the provisions of this indenture shall be in force, at all times, continue and preserve the legal organization of the said Albany and West Stockbridge Railroad Company; will hold such meetings, pass such votes, appoint all such officers, and confer upon them all such powers, keep such records of their proceedings, make such reports to the Legislature or otherwise as may be required by law, and do all such other acts as may be necessary and proper to carry into full effect all the objects and provisions of this indenture; and that they will, on reasonable demand, hereafter give such other assurances as may be necessary therefor.

And the said party of the second part, in consideration of the premises, and of the covenants and agreements of the said party of the first part herein contained, hereby covenant and agree

with the said party of the first part, their successors and assigns, that as a rent or compensation for the use of said road and all the property, rights and privileges hereby granted and demised, they will punctually pay the interest upon the said bonds of the city of Albany to the amount of one million of dollars, according to the tenor thereof, as the same shall fall due; that after applying to the said bonds the proceeds of the sinking fund established therefor in pursuance of said contracts between the parties hereto and the city of Albany, they will pay any balance which may be due upon said bonds, when they shall severally become due and payable; that they will, as soon as conveniently may be, finish the construction of the said railroad, with at least a single track throughout, and with the necessary depots and accommodations, and open the same for use, and will furnish and equip the same for business thereon; that thereafter, for and during the full term of the continuance of the charter of the party of the first part, and any renewals or extension of the same, they will keep the said road repaired, furnished and equipped for use, to a reasonable extent, and will continue to use and run the same, for the transportation of passengers and merchandise, and for the general accommodation of the public.

And the said party of the second part further covenant and agree that if the southern part of the New York and Albany Railroad shall hereafter be constructed and opened for use so far as to unite the same with the Albany and West Stockbridge Railroad at or in the vicinity of Groat's at Chatham Four Corners, in the county of Columbia, the party of the second part will, at their option, either permit the New York and Albany Railroad Company, upon payment of a reasonable sum therefor, to use with their engines and cars the part of said Albany and West Stockbridge Railroad between the point of junction and Greenbush; the same to be so done as not to interfere with or interrupt the regular trains or business of the party of the second part, or will transport the passengers and merchandise of the regular trains of the New York and Albany Railroad Company over said road, on as favorable terms as the average of those upon which passengers and similar merchandise are, for the time being, transported in a similar manner over the railroad between Worcester and said point of junction; and without any further delay

than may be necessary to avoid collision with the trains of the party of the second part upon said road; the said New York and Albany Railroad Company providing cars therefor to avoid transshipment at the point of junction, the same to be returned to them in a reasonable time, either empty or loaded, as the running and business may require; provided that if the said point of junction shall not be at a regular station of the Albany and West Stockbridge Railroad, the said New York and Albany Railroad Company shall furnish at said junction, and permit the party of the second part to occupy and use, free of charge, sufficient buildings and accommodations for their engines and other apparatus necessary and convenient for such transportation. And in case of any disagreement in executing these provisions, the matter in issue shall be decided by three commissioners, to be appointed by the chancellor of the State of New York.

And it is understood and agreed that the provisions of the two contracts heretofore made between the parties hereto, and the corporation of the city of Albany, shall remain in full force, so far as the same are not altered hereby.

In testimony whereof, the said parties have to this and all other indenture of even tenor and date, caused their respective corporate seals to be affixed, and the same to be signed by Marcus T. Reynolds, president of said Albany and West Stockbridge Railroad Company, and by George Bliss, agent of said Western Railroad Corporation, thereto severally authorized by votes, the day and year first above written, each party having a part.

MARCUS T. REYNOLDS, (Seal of the Albany and West Stockbridge R. R. Co.)
President, &c.

THE WESTERN RAILROAD CORPORATION, (Seal of the Western Railroad Corporation.)
By GEORGE BLISS, *Agent*.

At a meeting of the Board of Directors of the Western Railroad Corporation, duly held in Boston, November 11, 1841, this agreement was read and approved, and ordered to be sealed with the seal of said corporation, and signed and delivered in its behalf by George Bliss, its agent.

ELLIS GRAY LORING,
Clerk.

At a meeting of the directors of the Albany and West Stockbridge Railroad Company, held in Albany, November 18, 1841, this contract of transportation was read, and it was resolved that the same be approved and signed in duplicate, and delivered by Marcus T. Reynolds, the President of the company, and that the seal of the company be affixed thereto.

S. CHEEVER,
Secretary.

STATE OF NEW YORK, }
ALBANY COUNTY, } ss.

I do hereby certify that on the 19th day of November, 1841, personally appeared before me Marcus T. Reynolds, Esq., and George Bliss, to me well known as the individuals described in and who executed the within deed, the former as President of the Albany and West Stockbridge Railroad Company, and the latter as the agent of the Western Railroad Corporation, and being by me duly sworn, they did depose and say that they severally executed the said deed in the characters by which they are described, and that the seals impressed on the said deed are the common seals of the respective parties, and were affixed by their order.

J. LANSING,
First Judge of Albany Common Pleas, Counsellor, &c.

Recorded November 19, 1841, at 4 o'clock P. M., in Rensselaer County, Clerk's office, in book of deeds, No. 54, pages 394, 395, 396 and 397.

LELAND CRANDALL, *Clerk.*

Recorded December 9, 1841, at 10½ o'clock A. M., in Columbia County, Clerk's office, in deeds E E, at pages 526, 527, 528 and 529.

J. A. VAN VALKENBURGH, *Clerk.*

EXHIBIT D.

Know all men by these presents, That the Albany and West Stockbridge Railroad Company are held and firmly bound unto the Mayor, Aldermen and Commonalty of the City of Albany, in the sum of Two Millions of Dollars, lawful money of the United States of America,

to be paid to the said Mayor, Aldermen and Commonalty of the City of Albany, or to their certain attorney, successors or assigns. For which payment well and truly to be made, we bind ourselves and our successors firmly by these Presents, Sealed with our Corporate seal, Dated the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and forty-one.

The Condition of this obligation is such, That whereas by two certain Articles of Agreement, entered into between the said Mayor, Aldermen and Commonalty of the City of Albany, the said Albany and West Stockbridge Railroad Company, and the Western Railroad Corporation, the said Mayor, Aldermen and Commonalty have agreed to issue the Bonds or scrip of said City of Albany, for the sum of One Million of dollars, payable to bearer, one quarter part thereof in twenty-five years, one half part in thirty years, and the residue in thirty-five years from the dates thereof, severally, with interest at the rate of six per cent. per annum, payable semi-annually, on the first days of January and July, the principal and interest to be payable at the office of the said Western Railroad Corporation at Boston in the State of Massachusetts, with warrants for the interest attached thereto, the same to be delivered to the said Western Railroad Corporation, to aid in the construction of The Albany and West Stockbridge Railroad, a part of which Bonds have been heretofore issued and delivered as aforesaid, and the residue are to be issued as the same may be wanted therefor. If, therefore, the above bounden, Albany and West Stockbridge Railroad Company, shall pay, or cause to be paid, the interest which shall from time to time accrue upon the whole of said Bonds, according to their tenor, as the same shall fall due, and the principal thereof, when they shall severally become due and payable, and shall indemnify and save harmless the said Mayor, Aldermen and Commonalty of the City of Albany, from all loss, trouble or injury on account thereof, without fraud or other delay, then this obligation to be void, or else to remain in full force and virtue.

MARCUS T. REYNOLDS, [L. S.]
Prest of Alb. & W. S. R. R. Co.

In presence of
GEO. BLISS.

PLAINTIFFS' REQUESTS FOR FINDINGS.

REQUESTS OF THE PLAINTIFFS FOR FINDINGS AND RULINGS BY THE COURT UPON THE AMENDED PLEADINGS AND THE AGREED STATEMENT OF FACTS.

Under the first count of the amended declaration, — in which is claimed a tax of five per cent. upon the stock dividend of June 7, 1867, as there is no dispute that there was such a dividend of stock; nor as to the number or value of the shares divided, nor as to the rate of the dividend, as appears by the agreed statements of facts; and as this dividend of *stock* was legally the same as a dividend in *scrip*, and as the shares divided and issued were charged in the books of the Western Railroad Corporation to "profits, etc.," — the Court is requested to rule: —

1st. That the United States are entitled to recover under said first count, the sum of $140,000 and interest, being the amount of the tax of five per cent. on the twenty thousand shares of stock divided, which were, at the time of the dividend, of the market value of $140 a share, as follows: Twenty thousand shares at $140 a share is $2,800,000, of which five per cent. is $140,000, and interest thereon at six per cent. per annum, from Jan. 1, 1868.

2d. That the United States are entitled to recover under said first count the sum of $100,000, and interest, being the amount of the tax of five per cent. on the par value of the twenty thousand shares of stock divided, and interest thereon from Jan. 1, 1868.

3d. That said dividend, to the extent of $1,001,260.54, represented and included the increase which accrued to the fund, designated in the "Agreed Facts," as the "Massachusetts Sinking Fund," from Sept. 1, 1862, to June 7, 1867; and that upon that portion of the dividend which represented said $1,001,260.54, the plaintiffs are entitled to recover a tax of five per cent., amounting to the sum of $50,063.03.

4th. That said dividend, to the extent of $784,125.67, represented and included the increase, which accrued to said "Massachu-

setts Sinking Fund," from Sept. 1, 1862, to June 7, 1867, less the sum of $217,134.87, the amount of the accumulations which, between those two days, accrued to the sum originally paid, and carried to said fund as a premium or profit on the sale of scrip; and that upon that portion of the dividend which represented said $784,125.67, the plaintiffs are entitled to recover a tax of five per cent., amounting to the sum of $39,206.28.

5th. That said dividend, to the extent of $732,339.34, represented and included the increase, which accrued to said "Massachusetts Sinking Fund," from Sept. 1, 1862, to June 7, 1867, less the sum of $268,921.20, the amount of additions made to said fund between those two dates, from earnings of that part of it which was invested in United States bonds; and that upon that portion of the dividend, which represented said $732,339.34, the plaintiffs are entitled to recover a tax of five per cent., amounting to the sum of $36,616.97.

6th. That said dividend, to the extent of $914,414.49, represented and included the increase, which accrued to said "Massachusetts Sinking Fund," from Sept. 1, 1862, to June 7, 1867, less the sum of $86,846.05, the amount of the additions made to said fund between those two dates, from earnings of that part of the fund which was invested in bonds of the State of Massachusetts; and that upon that portion of the dividend which represented said $914,414.49, the plaintiffs are entitled to recover a tax of five per cent., amounting to the sum of $45,720.72.

7th. That said dividend, to the extent of $887,189.21, represented and included the increase which accrued to said "Massachusetts Sinking Fund," from Sept. 1, 1862, to June 7, 1867, less the sum of $114,071.33, the amount of the additions made to said fund between those two dates, from the earnings of that part of said fund invested in bonds on the interest of which the obligors paid the internal revenue tax, and that upon that portion of the dividend which represented said $887,189.21, the plaintiffs are entitled to recover a tax of five per cent., amounting to the sum of $44,359.46.

8th. That said dividend, to the extent of $841,260.54, represented and included the increase which accrued to said "Massachusetts Sinking Fund," from Sept. 1, 1862, to June 7, 1867, less the sum of

$160,000, the amount of the additions made to said fund between those two dates, from earnings of the company upon which an internal revenue tax of five per cent. has already been paid as upon profits of the company carried to the account of a fund; and that upon that portion of the dividend which represented said $841,260.54, the plaintiffs are entitled to recover a tax of five per cent., amounting to $42,063.03.

9th. That said dividend, to the extent of $640,343.16, represented and included the increase which accrued to said "Massachusetts Sinking Fund," from Sept. 1, 1862, to June 7, 1867, less $360,917.38, the aggregate of the following named sums, to wit, the sum of $86,846.05, the amount of the additions made to said fund between those two dates, from earnings of that part of the fund which was invested in bonds of the State of Massachusetts; the sum of $114,071.33, the amount of the additions made to said fund between those two dates, from the earnings of that part of said fund invested in bonds, on the interest of which the obligors paid the internal revenue tax; the sum of $160,000, the amount of the additions made to said fund between those two dates, from earnings of the company upon which an internal revenue tax of five per cent. has already been paid as upon profits of the company carried to the account of a fund; and that upon that portion of the dividend which represented said $640,343.16, the plaintiffs are entitled to recover a tax of five per cent., amounting to $32,017.15.

10th. That said dividend, to the extent of $154,287.09, represented and included the increase which accrued to said "Massachusetts Sinking Fund," from Sept. 1, 1862, to June 7, 1867, less $846,973.45, the aggregate of the following named sums, to wit, the sum of $217,134.87, the amount of the accumulations which, between those two dates, accrued to the sum originally paid and carried to said fund as a premium or profit on the sale of scrip; the sum of $268,921.20, the amount of additions made to said fund between those two dates from earnings of that part of it which was invested in United States bonds; the sum of $86,846.05, the amount of the additions made to said fund between those two dates, from earnings of that part of the fund which was invested in bonds of the State of Massachusetts; the sum of $114,071.33, the amount of the additions

made to said fund between those two dates, from the earnings of that part of said fund invested in bonds, on the interest of which the obligors paid the internal revenue tax; the sum of $160,000, the amount of the additions made to said fund between those two dates, from earnings of the company upon which an internal revenue tax of five per cent. has already been paid as upon profits of the company carried to the account of a fund; and that, upon that portion of the dividend which represented said $154,287.09, the plaintiffs are entitled to recover a tax of five per cent., amounting to $7,714.35.

11th. That so much of the $1,001,260.54 that accrued to the "Massachusetts Sinking Fund," from Sept. 1, 1862, to June 7, 1867, as is in excess of the aggregate sum of those parts of it which are shown by the record either to have been already taxed, or to have been legally exempt from taxation, was represented by and included in said dividends; and that upon that part of said dividend which represented such excess the plaintiff is entitled to recover a tax of five per cent. with interest thereon, from Jan. 1, 1868, at the rate of six per cent. per annum.

Under the second count of the amended declaration, the plaintiffs request that the Court will, under the agreed facts, find that the sum of $8,071.55 and interest thereon from July 1, 1872, is due from the defendant to the plaintiffs.

Under the third count of the amended declaration, and upon the agreed facts, the plaintiffs claim a tax upon the entire earnings (with the exception stated below) of the fund called the Massachusetts Sinking Fund, which were carried to the fund itself, from June 30, 1864, to Dec. 31, 1870, on the ground that such earnings were "profits of the corporation carried to the account of the fund"; the exception above referred to in this case being earnings from bonds, etc., upon which the obligors paid the tax.

Under the agreed facts, the plaintiffs request the Court to rule and find: —

1st. That the said Massachusetts Sinking Fund, so called, was in law the property of the Western Railroad Corporation, and afterwards of the defendant, the State of Massachusetts having only a special property in, and a lien upon it.

2d. That the entire earnings of the fund from June 30, 1864, to

Dec. 31, 1870, which were added to the fund during that period, were "profits of the corporation carried to a fund thereof," and as such were taxable, as claimed in the third count of the amended declaration, except where such earnings were tax paid, that is, were from bonds, etc., upon which the obligors paid the tax.

3d. That such earnings so carried to the fund from June 30, 1864, to Dec. 31, 1869, were $1,140,107.84; that of these earnings $133,966 were from securities on which the obligors had paid the tax, and therefore were not taxable, and that the remainder of said earnings, to wit, $1,006,141.84, being $1,140,107.84 less said sum of $133,966, were taxable; that the rate of tax thereon was five per cent., and the amount of said tax was $50,307.

4th. That such earnings so carried to the fund for the year 1870 were $120,653,87; two thirds of which, to wit, $80,435.92, were taxable at five per cent., and one third, to wit, $40,217.95, were taxable at two and a half per cent.

5th. That of the earnings of the fund for 1870, the sum of $6,027 was from securities on which the obligors had paid the tax, and therefore was not taxable; that giving the defendant the fullest benefit of this, by deducting the whole amount, $6,027, from the part of the earnings on which the tax of five per cent. is claimed, the amount of the tax due on the earnings of the fund for 1870 is as follows: Tax on $80,435.92, less $6,027, equals $74,408.92; at five per cent. is $3,720; and the tax on $40,217.95, at two and a half per cent., to wit, $1,005.

6th. That the several sums above named, to wit, $50,307, $3,720, and $1,005, in all $55,032, are due to the plaintiffs from the defendant, under the third count of the amended declaration, with interest thereon from Jan. 1, 1871.

7th. That the entire earnings of the fund from June 30, 1864, to Dec. 31, 1870, which were added to it during that period, were profits of the corporation carried to a fund thereof, and that those earnings, except such of them as the defendant had previously paid the tax upon, or as were derived either from securities on the earnings of which the obligors paid the tax, or from its investments in United States bonds, or from its investments in bonds of the State of Massa-

chusetts, were taxable at the rate in force at the time they were added to said fund or carried to its account.

8th. That the plaintiffs are entitled to recover a tax of five per cent. upon so much of the $1,140,107.84, being earnings which were carried to the fund from June 30, 1864, to Dec. 31, 1869, as is in excess of the aggregate sum of those parts of it which are shown by the record either to have been already taxed or to have been legally exempt from taxation, with interest thereon at the rate of six per cent. per annum, and a tax upon so much of the $120,653.87, being earnings which were carried to the fund during the year 1870, as is in excess of the aggregate sum of those parts of it which are shown by the record either to have been taxed or to have been legally exempt from taxation, at the rate of five per cent. for the period from Dec. 1, 1869, to July 31, 1870, and at the rate of two and a half per cent for the period from Aug. 1, 1870, to Nov. 30, 1870, with interest thereon at the rate of six per cent. per annum.

And the plaintiffs contend and ask the Court to rule that the earnings of the said fund, as found by the agreed facts, from its investments in bonds of the United States, to wit, the sums of $541,207.28 and $38,232.30, and from its investments in bonds of the State of Massachusetts, to wit, the sums of $209,167.62 and $3,611.87, were and are taxable, because the income arising from bonds of the United States was and is not exempt from taxation by the United States, however it might have been or may be exempt from taxation under State or municipal authority, and because there was and is no statutory or other legal exemption of the income of the said State bonds from taxation by the United States.

Under the fourth count of the amended declaration, and upon the agreed facts, the plaintiffs claim a tax upon the entire earnings (with the exception stated below) of the fund called the "Albany Sinking Fund," which were carried to the fund itself, from June 30, 1864, to Dec. 31, 1870, on the ground that such earnings were "profits of the corporation carried to the account of a fund," the exception above referred to in this case being earnings from bonds, etc., upon which the obligors paid the tax.

Under this count, upon the agreed facts, the plaintiffs request the Court to rule and find: —

1st. That the said Albany Sinking Fund, so called, was in law the property of the Western Railroad Corporation, and afterwards of this defendant.

2d. That the entire earnings of the said fund from June 30, 1864, to Dec. 31, 1870, which were carried to the fund during that period, were "profits of the corporation carried to a fund thereof," and as such were taxable, as claimed in the fourth count of the amended declaration, except where such earnings were tax paid, that is, were from bonds, etc., upon which the obligors paid the tax.

3d. That such earnings so carried to the said fund from June 30, 1864, to Dec. 31, 1869, were $253,987.18; that of these earnings $3,161.21 were from securities on which the obligor had paid the tax, and therefore were not taxable; and that the remainder of said earnings, to wit, $250,825.97 (being $253,987.18 less said sum of $3,161.21), were taxable; that the rate of tax thereon was five per cent., and that the amount of said tax was $12,541.

4th. That such earnings so carried to said fund for the year 1870 were $36,943.88, upon two thirds of which, to wit, $24,629, the rate of tax was five per cent., and the tax itself $1,231; and upon one third, to wit, $12,314, the rate of tax was two and one half per cent., and the tax itself was $308.

5th. That the several sums above named, to wit, $12,541, $1,231 and $308, in all $14,080, are due to the United States from the defendant, with interest thereon from Jan. 1, 1871.

6th. That the entire earnings and increase of the fund from June 30, 1864, to Dec. 31, 1870, which were added to it during that period, were profits of the corporation carried to a fund thereof, and that those earnings, except such of them as were derived either from securities on the earnings of which the obligors paid the tax, or from investments in United States bonds, were taxable at the rate in force at the time they were added to said fund or carried to its account.

7th. That the plaintiffs are entitled to recover a tax upon so much of the earnings and increase carried to the fund, from June 30, 1864, to Dec. 31, 1870, as is in excess of the aggregate sum of those parts thereof which are shown by the record either to have been taxed, or to have been legally exempt from taxation, at the rate in force at the

time such earnings and increase were carried to said fund, with interest thereon at the rate of six per cent. per annum.

And the plaintiffs contend and ask the Court to rule that the earnings of the said fund, as found by the agreed facts, from its investments in bonds of the United States, to wit, the sum of $2,300, were and are taxable for the reasons set forth in regard to a like matter in the requests for rulings under the third count of the amended declaration.

Under the fifth count of the amended declaration and upon the agreed facts, the plaintiffs claim that an internal revenue tax was due them from the defendant, upon the interest paid by the Western Railroad Corporation, and afterwards by this defendant, upon the sterling scrip or certificates of debt named in said fifth count, and in said agreed facts, and under said fifth count and upon said agreed facts, the plaintiffs request the Court to rule and find: —

1st. That such sterling scrip or certificates of debt became and were an indebtedness of the Western Railroad Corporation and afterwards of this defendant.

2d. That the payment of such sterling scrip or certificates of debt, constituting such indebtedness, both as regards the interest and principal thereof, was secured by the bonds and mortgages of the Western Railroad Corporation, set forth or referred to in said agreed facts, to which obligations of said Western Railroad Corporation this defendant succeeded.

3d. That the sterling scrip or certificates of debt, constituting such indebtedness, were issued payable twenty years after date, upon which interest was stipulated to be paid, and upon which coupons representing interest were issued to be paid.

4th. That the said Western Railroad Corporation, and afterwards this defendant, paid from its earnings the interest on said sterling scrip or certificates of debt and said coupons, from the date thereof, and especially from Sept. 30, 1862, to Dec. 31, 1871.

5th. That the said Western Railroad Corporation paid from its earnings after Sept. 30, 1862, and before June 30, 1864, $431,952, interest on said scrip or certificates of debt, upon all of which an internal revenue tax of three per cent. was due from it to the United

States; that it paid said internal revenue tax of three per cent. upon only $57,592 of such interest so paid, and that this defendant now owes the United States such tax of three per cent. upon the remainder of that sum, $431,952, to wit, upon $374,364, to wit, a tax of $11,230.80, and interest thereon from July 1, 1864.

6th. That said Western Railroad Corporation, and afterwards this defendant, paid from its earnings after June 30, 1864, and prior to Sept. 30, 1870, $1,111,348 interest on said scrip or certificates of debt, upon all of which an internal revenue tax of five per cent. was due from said corporations respectively to the United States; that such internal revenue tax of five per cent. was paid only upon $178,478 of such interest, and that this defendant now owes the United States such tax of five per cent. upon the remainder of that sum ($1,111,348), to wit, upon $932,870, to wit, a tax of $46,643.50, and interest thereon from Oct. 1, 1870.

7th. That this defendant corporation paid from its earnings after Sept. 30, 1870, and prior to Dec. 31, 1871, $25,184 interest on said scrip or certificates of debt, upon all of which the defendant owes the United States an internal revenue tax of two and a half per cent., to wit, the sum of $629.60, and interest thereon from Jan. 1, 1872.

8th. That under this fifth count of the amended declaration, upon the said agreed facts, the defendant corporation owes the United States the said several sums of $11,230.80, of $46,643.50, and of $629.60, and interest on each thereof as follows, to wit: —

On $11,230.80, from July 1, 1864; on $46,643.50, from Oct. 1, 1870; and on $629.60, from Jan. 1, 1872.

9th. That upon the interest which became due and payable upon said bonds or sterling scrip or certificates of debt from or after March 10, 1866, including those owned by non-resident aliens, and which was paid from earnings of the corporation, there was a tax at the rate in force at the time said interest became due and payable, and that the plaintiffs are now entitled to recover so much of said tax as has not already been paid.

The plaintiffs also claim, and the Court is requested to rule, that the obligation on the part of the defendant to pay the taxes claimed in the several counts of the amended declaration does not depend

upon said several taxes having been duly assessed upon said corporations, or either of them, but that this action for said taxes, if they are in other respects due as claimed, may be sustained without such assessment.

RICHARD OLNEY,
Special United States Attorney.

July 12, 1887.

DEFENDANT'S REQUESTS FOR FINDINGS.

REQUESTS OF THE DEFENDANT FOR RULINGS AND FINDINGS BY THE COURT ON THE PLEADINGS AND AGREED FACTS.

COUNT I.

1. Under the first count of the amended declaration that the stock therein alleged to have been issued was not, within the meaning of the Acts of Congress under which this action proceeds, a dividend out of or as part of the earnings, profits, incomes or gains of the Western Railroad Corporation.

2. That no tax on account of said issue of stock was ever properly assessed on the defendant or on the Western Railroad Corporation.

COUNT II.

1. Under the second count of the amended declaration, it requests the Court to rule that no tax could be legally assessed on account of said dividends on stock owned by the State of Massachusetts, or either of them.

2. That said taxes were not, nor was any part thereof, properly assessed.

3. That under the adjudications of the department in repaying a tax on dividends on stock held by the State of Massachusetts as having been illegally assessed, was an adjudication that such tax could not properly be assessed, and was entirely inconsistent with the idea that the taxes claimed in said count had ever been assessed.

4. That when the dividend claimed in said count to have been paid in the year 1872 was declared, the same was not taxable, nor at any time thereafter.

COUNT III.

1. Under the third count the defendant asks the Court to rule that the Massachusetts Sinking Funds (so called) were not profits of the corporation carried to a fund thereof, and therefore were not taxable.

2. That the earnings of said fund were not profits of the corporation carried to a fund, and were not taxable.

3. That on that portion of said fund which accrued previous to the 30th of June, 1864, to wit, $2,182,697.17, no tax could be properly assessed.

4. That on the earnings of that portion of the fund which accumulated prior to the 30th of June, 1864, no tax could properly be assessed.

5. That on the earnings of that portion of said fund derived from bonds of the United States, no tax could be assessed.

6. That on that portion of the earnings of said fund derived from securities on which the obligor paid the tax, no tax could be assessed.

7. That on that portion of the earnings derived from bonds of the State of Massachusetts, no tax could be assessed.

8. That on that part of the earnings derived from the premium above the par value of the bonds, no tax could be assessed.

COUNT IV.

1. Under the fourth count the defendant asks the Court to rule that the Albany Sinking Fund (so called) was not the profits of the corporation carried to a fund thereof, and therefore was not taxable.

2. That on that part of said fund which had accumulated before the thirtieth day of June, 1864, to wit, $865,480.52, no tax could be assessed, and that no tax could be assessed upon the earnings of that portion of said fund, which earnings amounted to $248,908.61.

3. That on the earnings of that portion of said fund derived from bonds of the United States, no tax could be assessed.

4. That on that portion of the earnings of said fund derived from securities on which the obligor paid the tax, no tax could be assessed.

The defendant also asks the Court to rule that none of the taxes alleged in said declaration were ever duly assessed, and therefore cannot be collected in this action.

The defendant asks the Court to find for the defendant on each of the counts in the amended declaration, and to order judgment to be entered for the defendant thereon.

By A. L. SOULE, *Its Attorney.*

This cause being submitted to the Court upon the foregoing record and requests for findings, and the Court being of the opinion that judgment should be entered for the defendant, the following bill of exceptions is filed and allowed.

PLAINTIFFS' BILL OF EXCEPTIONS.

[FILED AND ALLOWED JULY 28, 1887.]

Upon the pleadings and agreed facts set forth in the record in this cause, and upon consideration of the requests for findings and rulings, submitted with said pleadings and agreed facts, the Court denies each and every of the requests for findings and rulings made by the plaintiffs, and grants each and every of the requests for findings and rulings made by the defendant, and, upon said pleadings and agreed facts of record, rules that the plaintiffs are not entitled to recover anything from the defendant under any of the counts of said plaintiffs' declaration, and orders judgment for the defendant. To the said rulings of the Court, the plaintiffs duly except, and tender this their bill of exceptions, and the same being found conformable to the facts, is allowed by the Court, and directed to be filed of record in said cause.

LEBARON B. COLT, *Circuit Judge.*

JUDGMENT.

It is thereupon, to wit, July 28, 1887, considered by the Court that the said United States take nothing by their said writ.

A true record:

Attest: JOHN G. STETSON, *Clerk*.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
MASSACHUSETTS DISTRICT, ss.

I, John G. Stetson, Clerk of the Circuit Court of the United States for the First Circuit and District of Massachusetts, certify that the foregoing is a true copy of the record in the cause entitled "United States of America, plaintiffs, *v.* The Boston and Albany Railroad Company, a corporation duly established by law, and having its usual place of business in Boston, in said District of Massachusetts, defendant," lately determined in said Circuit Court, and of all proceedings therein.

In testimony whereof, I hereto set my hand and affix the seal of said Circuit Court, at Boston, in said district, this fifth day of October, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and twelfth.

[SEAL] JOHN G. STETSON, *Clerk*.

The following assignment of errors is transmitted with the writ of error in this cause, at the request of the plaintiffs: —

PLAINTIFFS' ASSIGNMENT OF ERRORS.

The plaintiffs complain and assign as errors the rulings following, to wit: —

1st. Each and every denial by the Court of each and every of the requests for findings and rulings made by the plaintiffs.

2nd. The granting by the Court of each and every of the requests for findings and rulings made by the defendants.

3rd. The ruling by the Court that the plaintiffs are not entitled to recover anything from the defendant under any of the counts of said plaintiffs' declaration.

RICHARD OLNEY,
U. S. Attorney (Special) for Plaintiffs.

CITATION.

THE UNITED STATES OF AMERICA.

To the Boston and Albany Railroad Company, a corporation duly established by law, and having its usual place of business in Boston, in the District of Massachusetts, GREETING:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States, for the District of Massachusetts, wherein the United States of America are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiffs, in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable LeBaron B. Colt, Circuit Judge of the

United States for the First Judicial Circuit, this thirtieth day of July, in the year of our Lord one thousand eight hundred and eighty-seven.

LEBARON B. COLT,
U. S. Circuit Judge, First Judicial Circuit.

SERVICE OF CITATION.

UNITED STATES OF AMERICA,
DISTRICT OF MASSACHUSETTS, ss.

BOSTON, Aug. 1, 1887.

I, this day, at one o'clock fifty-five minutes, cited the Boston and Albany Railroad Company to appear at the time and place within named, by giving in hand to C. E. Stevens, treasurer thereof, a duly attested copy of this citation.

N. P. BANKS,
U. S. Marshal.

Fees:

Service . . .	$2 00
Travel . . .	12
	$2 12

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 400.

THE UNITED STATES, APPELLANT,

vs.

THE UNION COAL COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

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1 Pleas in the circuit court of the United States for the district of Colorado sitting at Denver.

Be it remembered that heretofore, and on, to wit, the 26th day of August, A. D. 1886, came the United States of America, by Henry W. Hobson, esq., its attorney, and filed in the said court and in said cause, its bill of complaint, and sued out of and under the seal of said court a writ of subpœna; and the said bill is in words and figures as follows, to wit:

Bill of Complaint.

UNITED STATES OF AMERICA.
District of Colorado, ss.

In the circuit court of the United States within and for the district of Colorado.

THE UNITED STATES OF AMERICA,
vs.
THE UNION COAL COMPANY.

To the honorable judges of the circuit court of the United States in and for the district of Colorado.

The United States of America, by A. H. Garland, its Attorney-General, and Henry W. Hobson, its attorney for the district of Colorado, brings this its bill of complaint against the Union Coal Company, a corporation duly organized and doing business under the laws of the State of Colorado, in said State, and authorized to transact business, and to hold and acquire real property in said State by virtue of a compliance with the laws thereof.

Humbly complaining showeth unto your honors your orator that
2 heretofore to wit, and on or about the first day of May, 1870, the United States of America, was and for a long time prior thereto, had been, the owner in fee of the following described real estate and tracts of land situate in the county of Weld and State of Colorado, and within the district of lands subject to sale at Denver, Colorado, to wit: The NE. ¼ sec. 4, tp. 1 N., R. 68 W., containing 157.70 acres; the SE. ¼ sec. 4, tp. 1 N., R. 68 W., containing 160 acres; the NW. ¼ sec. 4, tp. 1 N., R. 68 W., containing 158.16 acres; the SW. ¼ sec. 4, tp. 1 N., R. 68 W., containing 160 acres; the NE. ¼ sec. 8, tp. 1 N., R. 68 W., containing 160 acres; the SE. ¼ sec. 8, tp. 1 N., R. 68 W. containing 160 acres; the NE. ¼ sec. 10, tp. 1 N., R. 68 W., containing 160 acres; the NW. ¼ sec. 10, tp. 1 N., R. 68 W., containing 160 acres; the SE. ¼ sec. 10, tp. 1 N., R. 68 W., containing 160 acres; the SW. ¼ sec. 10, tp. 1 N., R. 68 W., containing 160 acres; the NW. ¼ sec. 14, tp. 1 N., R. 68 W., containing 160 acres; the NE. ¼ sec. 14, tp. 1 N., R. 68 W., containing 160 acres; the SE. ¼ sec. 14, tp. 1, N., R. 68 W., containing 160 acres; the SW. ¼ sec. 14, tp. 1 N., R. 68 W., containing 160 acres.

And further complaining showeth your orator that on or about the first day of May, 1870, one R. R. McCormick, and certain other persons whose names are to your orator unknown, who were associated together as The Denver Land Association, did devise and form a fraudulent and illegal

scheme and device, and did confederate and combine, together with certain other persons whose true names and iden'ties are to your orator unknown, to cheat and defraud your orator out of the foregoing tracts of land, and to fraudulently and illegally procure patents therefor from your orator, said frauds to be effected and perpetuated by a violation of the acts of Congress with regard to the public lands, and of the rules and regulations with regard to the same prescribed by your orator's Secretary of the Interior Department according to law, and upon the false and fraudulent pretexts that said lands belonged and were due to certain pretended persons whom it was falsely pretended had done all the acts and performed all the duties required to be done in such behalf by said acts of Congress and said rules and regulations, all of which more fully appears hereinafter.

3 And further complaining showeth your orator unto your honors that at the time last aforesaid and for a long time prior and subsequent thereto there were certain acts of Congress and certain rules and regulations prescribed thereunder by your orator's Secretary of the Interior Department as aforesaid, and in and by which it was, among other things, provided and prescribed as follows, to wit:

That where a citizen and one entitled thereto by law, had settled upon, improved and otherwise perfected a right to any portion of your orator's public land as a pre-emption claim and location, he should appear before the register and receiver of your orator's proper land office, and make proof according to law, and according to said rules and regulations, of his right to enter and locate said land as a pre-emption claim and location. And it was furthermore provided that a person desiring and entitled to locate a pre-emption claim as aforesaid, could file and tender in full payment for the land to be pre-empted a certain scrip known and called agricultural college scrip, and more fully set out and described hereinafter. And it was furthermore provided that upon a pre-emp or locating upon public land with said scrip, and tendering the same in payment for said land, that the register and receiver of your orator's proper land office should, upon said pre-emptor having otherwise complied with the law and with the rules and regulations of your orator's General Land Office aforesaid, receive said scrip and allow such pre-emption entry and location, and that the register aforesaid should issue, in duplicate, a certificate showing the same, one of which said duplicate certificates was to be given to said pre-emptor; and furthermore, that in case the tract of land sought to be entered exceeded the land for which said agricultural college scrip would pay at the rate prescribed by law, the applicant for entry should be allowed to pay for said excess in cash, and the receiver aforesaid, should issue in duplicate a receipt for such excess price, giving one of said duplicate

4 receipts to said pre-emptor, all of which more fully appears by said rules and regulations, to which reference is hereby made.

And thereupon said register and receiver were required to transmit all affidavits, proofs, applications, certificates, and receipts in said matter made, filed, and issued to your orator's General Land Office at Washington, District of Columbia. And it was furthermore provided that if it should appear to said General Land Office, and to the officers thereof, by said affidavits, proofs, applications, certificates, and receipts, that the pre-emptor, applying as aforesaid, had complied with the acts of Congress and the

said rules and regulations of said General Land Office, in such case made and provided, and was otherwise entitled to said land under the pre-emption law and upon the production and surrender of the duplicate certificate and receipt issued and given to the pre-emptor as aforesaid, a patent should issue to the said pre-emptor, conveying to him all of your orator's rights, title, interest, and estate in and to the land located as aforesaid.

And it was also provided by said acts of Congress and said rules and regulations that where any citizen entitled thereto by law, has settled upon, improved, and otherwise perfected a right to any portion of your orator's public land as a pre-emption claim and location he might appear before the register and receiver of your orator's proper land office and make proof according to law and said rules and regulations of his right to enter and locate said land as a pre-emption claim and location, and apply to enter the same. And it was furthermore provided that a person desiring and entitled to locate a pre-emption claim as aforesaid should, at the time of making his final proof and application, pay to the receiver of your orator's proper land office the price of said land as established by law, and that upon a pre-emptors making his proof of right to enter said land as aforesaid, and upon his paying for said land as aforesaid, the register and receiver of your orator's proper land office should, the pre-emptor having otherwise complied with law and with the rules and regulations aforesaid, allow such pre-emption entry and location and issue in duplicate a certificate showing the same and a receipt for the money paid, one of which certificates and one of which receipts were to be given to said pre-emptor.

And thereupon said register and receiver were required to transmit all of said affidavits, proofs, applications, certificates, and receipts, in said matter made, filed, and issued, to your orator's General Land Office, in the city of Washington, District of Columbia, aforesaid. And it was furthermore provided that if it should appear at said General Land Office and to the officers thereof by said affidavits, proofs, applications, certificates, and receipts that the pre-emptor applying as aforesaid had complied with the acts of Congress and with said rules and regulations, and was otherwise entitled to make pre-emption upon the public lands of your orator, and upon the production and surrender of the duplicate receipt issued and given to the pre-emptor as aforesaid, a patent should issue to the said pre-emptor, conveying to him all of your orator's right, title, and interest and estate in and to the lands located as aforesaid.

And your orator further shows and alleges that at the time of the conspiracy aforesaid, and at the various times hereinafter set out, the said R. R. McCormack, or some other of his co-conspirators, had come into and was in the possession of three certain and separate lots or parcels of scrip, commonly known and designated as Agricultural College scrip, which said lots or parcels of scrip had been theretofore severally issued to the State of Tennessee by the Government of the United States under and in pursuance of an act of Congress in that behalf made and provided, and entitled "An act donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and mechanical arts," and which act was approved July 2nd, 1862, said lots or parcels of scrip being numbered respectively No. 1443 for one quarter section of land and No. 1441 for one quarter section of land, and No. 1439 for one quarter

section of land, and which said certificate of scrip number 1443 bore upon it an indorsement and assignment purporting to have been made and executed by the State of Tennessee, by its proper officer, to one Royal Duff, and which said certificate of scrip number 1441 bore upon it an indorsement and assignment purporting to have been made and executed by the State of Tennessee, by its proper officer, to one Paul Linger, and which
6 said certificate of scrip number 1439, bore upon it an indorsement and assignment purporting to have been made and executed by the State of Tennissee, by its proper officer, to one Daniel H. Mulchoy.

(1) And your orator further shows unto your honors that the said conspirators, or some one of them, aforesaid, being in possession of said Agricultural College scrip number 1443, and having determined to secure title to certain of your orator's public land by fraudulently pretending that the same had been settled upon, improved, and possessed by a person entitled to pre-empt the same, and to further carry out and effect the objects of the conspiracy aforesaid did, on the 26th day of November, 1870, or thereabouts, write out, sign, and execute, or cause to be written out, signed, and executed, a certain application in the name of, or purporting to be in the name of, a person calling himself or called Royal Duff, to make final proof, entry, and payment upon and for the NE. ¼ Sec. 4, Tp. 1 N., R. 68 W., county of Weld and State of Colorado, as a pretended settler and pre-emptor, and did furthermore write out, sign, and execute, or cause to be written out, signed, and executed, in the name of, or purporting to be in the name of, the said person calling himself or called Royal Duff, a certain paper and affidavit, which was, or purported to be, subscribed and sworn to before C. H. McLaughlin, receiver of your orator's land office at Denver, Colorado, and which was pretended to be an affidavit made in the course of final proof, as required by law, by the said pretended Royal Duff, as a pre-emptor as aforesaid, and which said paper and affidavit bears date on the day last aforesaid, and in which it was represented and pretended, or purported to be represented and pretended, amongst other things, that the said pretended Royal Duff had never had the benefit of any right of pre-emption under the provision of the act of Congress approved September 4th, 1841, and entitled "An act to appropriate the proceeds of the sale of public lands and to grant pre-emption rights;" that the said pretended Royal Duff was not the owner of three hundred and twenty acres of land in any State or Territory of the United States, and that he had not settled upon and improved the said tract of land above described on speculation, but
7 in good faith to appropriate it to his own exclusive use and benefit, and that he had not directly or indirectly made any agreement or contract in any way or manner with any person or persons whatsoever by which the title which he might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself.

And having filed said pretended application in the name of the said pretended Royal Duff to make said pre-emption entry as aforesaid, the said conspirators, or some one of them, did furthermore, in pursuance of law, and in the way of final proof of the right of the said pretended Royal Duff to make said pre-emption entry, write out, sign, and execute, or cause to be written out, signed, and executed, a certain other paper, deposition, and affidavit, which was, or purported to be, the affidavit of a certain per-

son calling himself or called Paul Lingen, and whome it was pretended was a witness for the said pretended Royal Duff, said affidavit having been subscribed and sworn to before C. H. McLaughlin, receiver of your orator's land office at Denver Colorado, and in and by which said paper, deposition, and affidavit, bearing date at the time last aforesaid, the said pretended Paul Linger testified, or was pretended to have testified, among other things, that he was thirty-one years of age, a farmer, residing in the county of Weld and State of Colorado; that he had known the said Royal Duff, the claimant, for over three years, and knew that on the 28th day of May, 1870, he was a native born citizen of the United States, and a single man over the age of twenty-one years; that the claimant, Royal Duff, was at the time of making said affidavit an inhabitant of and settled upon the N. E. ¼ Sec. 4, Tp. 1 N., R. 68 W., in the county of Weld and State of Colorado; that settlement was made by him upon said tract of land on the 28th day of May, 1870, and had been continuous since that time; that the said Royal Duff had erected a one-story frame dwelling-house, fully enclosed, 14 by 16 feet, with one door and two windows, shingled roof, and board floor, and had plowed and cultivated three acres or more of said tract of land, and had built thereon one hundred and fifty rods or more of post-and-board fence, and that he had used said land for agricultural and stock-raising purposes, and had also built a frame stable thereon, and that he had not abandoned a residence on his own land in this country to make said settlement.

8 And your orator further shows unto your honors that, said affidavits having been made as aforesaid, the said conspirators, or some one of them, filed the same, or caused them to be filed, with the register and receiver of your orator's land office at Denver, Colorado, in pursuance of the acts of Congress and the rules and regulations aforesaid.

And the said conspirators, or some one of them, did furthermore, on or about the 26th day of November, 1870, file in the name of the said pretended Royal Duff the application aforesaid, which application purported to be by a man called Royal Duff, to locate the above-described tract of land as a pre-emption claim, and to give in payment and satisfaction therefore the said above described agricultural college scrip number 1443, so far as the same would pay for said land, and at the same time said conspirators, or some one of them, tendered and deposited, or caused to be tendered and deposited, with said register and receiver the said agricultural college scrip in part payment and satisfaction of the purchase price for the title of said described tract of land; and the said tract of land being in excess of the amount of land for which said script would pay, some one of said conspirators, to your orator unknown, paid to said receiver of public moneys as an excess price for said land the sum of one hundred and ninety-seven dollars and twelve cents ($197.12).

And further showeth your orator unto your honors that at the time of the making and filing of said application and said affidavits, and after the same had been done, the register of your orator's said land office did make out and issue in duplicate a certain certificate, which certificate, among other things, recited that upon the 26th day of November, 1870, the above-described tract of land had been located upon by Royal Duff with scrip number 1443, subject, however, to any pre-emption claim which might be filed for said land within forty days from the said date; and at the same

time the receiver of your orator's said land office issued in duplicate an excess receipt for the sum of one hundred and ninety-seven dollars and twelve cents, which recited that said amount of money had been received from one Royal Duff as an excess of price upon said tract of land. And
9 said register and receiver thereupon delivered one of said duplicate receipts to some one of said conspirators, to your orator unknown, and thereupon, in pursuance of said rules and regulations of your orator's General Land Office aforesaid, forwarded said affidavits, application, and other papers, together with said agricultural college scrip, and one of said duplicate certificates, and one of said duplicate receipts to your orator's General Land Office at Washington, District of Columbia, for the purpose of having a patent for said land issued by your orator in the name of the said pretended Royal Duff upon said lands.

And your orator further shows that subsequently the said R. R. McCormick or some one of his co-conspirators, unto your orator unknown, or some person acting for them or on their behalf, presented and filed, or caused to be presented and filed in behalf of the said pretended Royal Duff, the outstanding duplicate certificate and receipt issued and delivered as aforesaid at your orator's General Land Office, and thereupon requested the issueance of a patent for said land in the name of the said pretended Royal Duff. And thereupon, and on, to wit, the 5th day of June, 1871, your orator, by and through its properly-authorized officers, fully relying upon the truthfulness of said certificates and receipts and of said affidavits, application, and other papers aforesaid, and trusting and confiding in the acts of the said register and receiver, and believing that one Royal Duff had a good and legal right to pre-empt said land and to receive a patent therefor, and being greatly misled and deceived thereby, did issue its patent for the above-described tract of land in the name of the said pretended Royal Duff, which patent purported to convey to him said tract of land, and which said patent was thereupon delivered to some one of said conspirators, or to some one acting for them unto your orator unknown.

And, further complaining, showeth your orator unto your honors that all the statements and allegations of said application, affidavits, and proof were totally false, fraudulent, and untrue; that no such person as Royal Duff ever made settlement of any kind on said tract of land at any time prior to the issuance of your orator's patent as aforesaid. That no such
10 person as Royal Duff ever settled upon said land in good faith to appropriate it to his own exclusive use and benefit, and that no such person as Royal Duff had ever any kind of dwelling-house or made any other improvements either in the way of building or cultivation upon said tract of land, nor had he ever used said land for agriculture and stock-raising or any other purpose; that the said pretended Royal Duff was not a citizen of Weld County at all.

And your orator avers and alleges the fact to be that prior to the issuance of its patent aforesaid no settlement upon said tract of land had been made by any one, nor were there any improvements of any kind upon said land, but the same was totally vacant, unoccupied, and uncultivated; and the entry aforesaid, and the application, affidavits, and proof aforesaid were each and all fals'ly and fraudulently made for the purpose of deceiving your orator and of obtaining its patent as aforesaid, and for the purpose of appropriating said land to the use and benefit of the said R. R. McCormick and those associated with him, unto your orator unknown.

And your orator further charges and alleges the fact to be that if said pretended pre-emptor, Royal Duff, and his said pretended witness, Paul Lingen, were myths and fictitious persons, and that their said names are fictitious, and that no persons of such names have ever lived or been known in said Weld County at any time.

And your orator further alleges and charges the fact to be that if said affidavits and proof were ever made and sworn to by any one, as they purport to have been, that they were so made and sworn to by persons falsely pretending and representing themselves to be Royal Duff and Paul Lingen, and that the same was done at the instance and by the request and with the knowledge of the said R. R. McCormick and of those acting and conspiring with him.

And, further complaining, showeth your orator to your honors that in further pursuance of the fraudulent scheme and combination hereinbefore set out, the said R. R. McCormick, or some one of those associated with him, being in possession of said agricultural college scrip number 1441, and having determined to procure title to certain of your orator's public
11 land by fraudulently pretending that the same had been settled upon, improved, and possessed by a person entitled to pre empt the same, and to further carry out and effect the objects of the conspiracy aforesaid did, on the 28th day of November, 1870, or thereabouts, write out, sign, and execute, or cause to be written out, signed, and executed, a certain application in the name of, or purporting to be in the name of, a person calling himself or called Paul Linger, to make final proof and entry and payment upon and for the said SE. ¼ Sec. 4, Tp. 1 N., R. 68 W., county of Weld and State of Colorado, as a pretended set'ler and pre-emptor; and did furthermore write out, sign, and execute, or cause to be written out, signed, and executed, in the name of the said person calling himself or called Paul Linger, a certain paper and affidavit, which was, or purported to be, subscribed and sworn to before C. H. McLaughlin, receiver of your orator's land office at Denver, Colorado, and which was pretended to be an affidavit made in the course of final proof, as required by law, by the said pretended Paul Linger as a pre-emptor as aforesaid, and which said paper and affidavit bears date on the day last aforesaid, and in which it was represented and pretended, or purported to be represented and pretended, amongst other things, that the said pretended Paul Linger had never had the benefit or any right of pre-emption under the provisions of the act of Congress approved September 4th, 1841, and entitled "An act to appropriate the proceeds of the sale of the public lands and to grant pre-emption rights;" that the said pretended Paul Linger was not the owner of three hundred and twenty acres of land in any State or Territory of the United States, and that he had not settled upon and improved the tract of land above described on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he had not directly or indirectly made any agreement or contract in any way or manner with any person or persons whatsoever by which the title which he might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself.

And having filed said pretended application in the name of the said pretended Paul Linger to make a pre-emption entry as aforesaid, the

said conspirators, or some one of them, did furthermore, in pursu-
12 ance of law and in the way of final proof of the right of the said pretended Paul Linger to make said pre-emption entry, write out, sign, and execute, or cause to be written out, signed, and executed, a certain other paper, deposition, and affidavit which was purported to be an affidavit of a certain person calling himself, or called Royal Duff, and whome it was pretended was a witness for the said pretended Paul Linger, said affidavit having been subscribed and sworn to, or purporting to have been subscribed and sworn to, before C. H. McLaughlin, receiver of your orator's land office at Denver, Colorado, and in and by which said paper, deposition, and affidavit, bearing date at the time last aforesaid, the said pretended Royal Duff testified, or was pretended to have testified, amongst other things, that he was twenty-seven years of age, a farmer, residing in the county of Weld and State of Colorado; that he had known Paul Linger, the claimant, for three years, and knew that on the 30th day of May, A. D. 1870, he was a citizen of the United States, and that the said Linger was a single man over the age of twenty-one years; that the said Paul Linger was at that time an inhabitant of and settled upon the S. E. ¼ sec. 4, Tp. 1 N. R., 68 W., in the county of Weld and Territory of Colorado, and that he first made settlement upon said pre-emption on the 30th day of May, 1870, and had since continued to reside thereon, and had erected a one-story frame dwelling-house fully enclosed, 14 by 16 feet, with one door and two windows, shingled roof and board floor, and had plowed and cultivated three acres or more of said tract of land, and built thereon two hundred rods or more of post and board fence, and that he had also built a board corral and dug a well on said tract, and had not abandoned a residence on his own land within this Territory to make said settlement.

And your orator further shows unto your honors that the said affidavits, having been made as aforesaid, the said conspirators, or some one of them, filed them same, or caused them to be filed with the register and receiver of your orator's land office at Denver, Colorado, in pursuance of the acts of Congress and the rules and regulations aforesaid.

13 And the said conspirators, or some one of them, did furthermore, on or about the 26th day of November, 1870, file in the name of the said pretended Paul Linger the application aforesaid, which application purported to be by a man called Paul Linger, to locate the above described tract of land as a pre-emption location, and to give in payment and satisfaction therefor the said above described agricultural college scrip number 1441, so far as the same would pay for said land, and at the same time said conspirators, or some one of them, tendered and deposited, or caused to be tendered and deposited, with said register and receiver the said agricultural college scrip in part payment and satisfaction of the purchase price for the title of said described tract of land, and the said tract of land being in excess of the amount of land for which said scrip would pay, some one of said conspirators, to your orator unknown, paid to said receiver of public moneys as an excess price for said land the sum of two hundred dollars ($200).

And further showeth your orator unto your honors that at the time of the making and filing of said application and said affidavits, and after the same had been done, the register of your orator's said land office did make out and issue in duplicate a certain certificate, which certificate amongst

other things recited that upon the 26th day of November, 1870, the above described tract of land had been located upon by Paul Linger with scrip number 1441, subject, however, to any pre-emption claim which might be filed for said land within forty days from said date, and at the same time the receiver of your orator's said land office issued in duplicate an excess receipt for the sum of two hundred dollars, which recited that said amount of money had been received from one Paul Linger as an excess price upon said tract of land. And said register and receiver thereupon delivered one of said duplicate receipts to some one of said conspirators, to your orator unknown, and thereupon, in pursuance of said rules and regulations of your orator's general land office aforesaid. forwarded said affidavits, application, and other papers, together with said agricultural college
14 scrip and one of said duplicate certificates and one of said duplicate receipts to your orator's General Land Office at Washington, District of Columbia, for the purpose of having a patent for said land issued by your orator in the name of the said pretended Paul Linger upon said lands.

And your orator further shows that subsequently the said R. R. McCormick, or some one of his said co-conspirators, unto your orator unknown, or some other person acting for them, or on their behalf, presented and filed, or caused to be presented and filed, in behalf of the said pretended Paul Linger, the outstanding duplicate certificate and receipt issued and delivered as aforesaid at your orator's said General Land Office, and thereupon requested the issuance of a patent for said land in the name of the said pretended Paul Linger. And thereupon and on, to wit, the 5th day of June, 1871, your orator, by and through its properly authorized officers, fully relying upon the truthfulness of said certificates and receipts and of said affidavits, application, and other papers aforesaid, and trusting and confiding in the acts of the said register and receiver, and believing that one Paul Linger had a good and legal right to pre-empt said land and receive a patent therefor, and being greatly misled and deceived thereby, did issue its patent for the above described tract of land in the name of the said pretended Paul Linger, which patent purported to convey to him said tract of land, and which said patent was thereupon delivered to some one of said conspirators, or to some one acting for them, unto your orator unknown.

And further complaining showeth your orator unto your honors that all the statements and allegation of said paplications, affidavits, and proof were totally false, fradulent, and untrue; that no such person as Paul Linger ever made settlement of any kind on said tract of land at any time prior to the issuance of your orator's patent aforesaid; that no such person as Paul Linger ever settled upon said land in good faith to appropriate it to his own exclusive use and benefit, and that no such person as Paul
Linger had ever erected any kind of dwelling house or made any
15 other improvements either in the way of building or cultivation upon said land, nor had he ever used said land for agriculture and stock raising or any other purpose; that the said pretended Paul Linger was not a citizen of Weld County at all.

And your orator avers and alleges the fact to be that prior to the issuance of its patent aforesaid no settlement upon said tract of land had been made by any one, nor were there any improvements of any kind

upon said land, but the same was totally vacant, unoccupied, and uncultivated, and the entry aforesaid, and the application, affidavits, and proof aforesaid, were each and all falsely and fraudulently made for the purpose of deceiving your orator and of obtaining its patent aforesaid, and for the purpose of appropriating said land to the use and benefit of the said R. R. McCormick and those associated with him, unto your orator unknown.

And your orator further charges and alleges the fact to be that the said pretended pre-emptor, Paul Linger, and his said pretended witness, Royal Duff, were myths and ficticious persons, and that their said names are ficticioss names, and that no persons of such names have ever lived or been known in said Weld County at any time.

And your orator further alleges and charges the fact to be that if said affidavits and proof were ever made and sworn to by any one, as they purport to have been, that they were so made and sworn to by persons falsely pretending and representing themselves to be Paul Linger and Royal Duff, and that the same was done at the instance and by the request and with the knowledge of the said R. R. McCormick, and of those acting and conspiring with him.

And further complaining showeth your orator unto your honors that in further pursuance of the fraudulent scheme and combination hereinbefore set out the said R. R. McCormick, or some one of those associated with him, being in possession of said agricultural college scrip, number 1439, and having determined to procure title to certain of your orator's public land by fraudulently pretending that the same had been settled
16 upon, improved, and possessed by a person entitled to pre-empt the same, and to further carry out and effect objects of the conspiracy aforesaid, did on the 20th day of November, 1870, or thereabouts, write out, sign, and execute, or cause to be written out, signed, and executed, a certain application in the name of or purporting to be in the name of a person calling himself or called Daniel H. Mulchoy, to make final proof, entry, and payment upon and for the NW. ¼ Sec. 4, Tp. 1 N., R. 68 W., county of Weld and State Colorado, as a pretended settler and pre-emptor, and did furthermore write out, sign, and execute, or cause to be written out, signed, and executed, in the name of or purporting to be in the name of the said person calling himself or called Daniel H. Mulchoy, a certain paper and affidavit, which was or purported to be subscribed and sworn to before C. H. McLaughlin, receiver of your orator's land office at Denver, Colorado, and which was pretended to be an affidavit made in the course of final proof, as required by law, by the said pretended Daniel H. Mulchoy as a pre-emptor as aforesaid, and which said paper and affidavit bears date on the day last aforesaid, and in which it was represented and pretended, or purported to be represented and pretended amongst other things, that the said pretended Daniel H. Mulchoy had never had the benefit of any right of pre-emption under the provisions of the act of Congress approved September 4th, 1841, and entitled "An act to appropriate the proceeds of the sale of public lands, and to grant pre-emption rights;" that the said pretended Daniel H. Mulchoy was not the owner of three hundred and twenty acres of land in any State or Territory of the United States, and that he had not settled upon and improved the tract of land above described on speculation, but in good faith to appro-

priate it to his own exclusive use and benefit, and that he had not directly or indirectly made any agreement or contract in any way or manner with any person or persons whatsoever by which the title which he might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself.

And having filed said pretended application in the name of the said pretended Daniel H Mulchoy, to make a pre-emption entry as afore-
17 said, the said conspirators, or some one of them, did furthermore, in pursuance of law, and in the way of final proof of the said pretended Daniel H. Mulchoy, to make said pre-emption entry, write out, sign, and execute, or cause to be written out, signed, and executed, a certain other paper, deposition, and affidavit, which was or purported to be the affidavit of a certain person calling himself or called Paul Linger, and whome it was pretended was witness for the said pretended Daniel H. Mulchoy, said affidavit having been subscribed and sworn to, or purporting to have been subscribed and sworn to, before C. H. McLaughlin, receiver of your orator's land office at Denver, Colorado, and in and by which said paper, deposition, and affidavit bearing date at the the time last aforesaid, the said pretended Paul Linger testified, or was pretended to have testified, among other things, that he was thirty-one years of age, a farmer, residing in the county of Weld, and Territory of Colorado; that he had known Daniel H. Mulchoy, the claimant, for sixteen months, and knew that on the 27th day of May, 1870, he was a native-born citizen of the United States; that claimant was a single man over the age of twenty-one years; that claimant was, at the time of making said affidavit, settled upon the NW.¼ of Sec. 4, Tp. 1 N., R. 68 W., in the county of Weld and Territory of Colorado; and that he had first settled upon the same on the 27th day of May, 1870, and had since that time continued to reside thereon, and had erected a one-story frame dwelling-house, fully enclosed, 14 by 16 feet, with one door and two windows, shingled roof and board floor, and that he had plowed and cultivated five acres or more of said tract of land, and built thereon two hundred rods or more of post and board fence, and had also built a frame stable and corral, and dug a well thereon, and had not abandoned a residence on his own land to make said settlement.

And your orator further shows unto your honors that said affidavits having been made as aforesaid, the said conspirators or some one of them filed the same, or caused them to be filed with the register and receiver of your orator's land office at Denver, Colorado, in pursuance of the acts of Congress and the rules and regulations aforesaid.

And the conspirators, or some one of them, did furthermore, on
18 or about the 20th day of November, 1870, file in the name of the said pretended Daniel H. Mulchoy, the application aforesaid, which application purported to be by a man called Daniel H. Mulchoy to locate the above-described tract of land as a pre-emption claim and to give in payment and satisfaction therefor the said above described agricultural college scrip, number 1439, so far as the same would pay for said land, and at the same time said conspirators, or some one of them, tendered and deposited, or caused to be tendered and deposited with said register and receiver, the said agricultural college scrip in part payment and satisfaction for the purchase price for the title of said described tract of land; and

the said tract of land being in excess of the amount of land for which said scrip would pay, some one of said conspirators, to your orator unknown, paid to said receiver of public moneys as an excess price for said land the sum of one hundred and nin'ty-seven dollars and seventy cents ($197.70).

And further showeth your orator unto your honors that at the time of the making and filing of said application and said affidavits, and after the same had been done the register of your orator's land office did make out and issue in duplicate a certain certificate, which certificate, amongst other things, recited that upon the 26th day of November, 1870, the above described tract of land had been located upon by Daniel H. Mulchoy with scrip number 1439, subject, however, to any pre-emption claim which might be filed for said land within forty days from said date, at the same time the receiver of your orator's said land office issued in duplicate an excess receipt for the sum of one hundred and ninty-seven dollars and seventy cents, which recited that said amount of money had been received from one Daniel H. Mulchoy as an excess price upon said tract of land. And said register and receiver thereupon delivered one of said duplicate certificates to some one of said conspirators, to your orator unknown, and thereupon, in pursuance of said rules and regulations of your orator's general land office aforesaid, forwarded said affidavits, application, and other papers, together with said agricultural college scrip, and one of
19 said duplicate certificates and one of said duplicate receipts to your orator's general land office at Washington, District of Columbia, for the purpose of having a patent for said land issued by your orator in the name of the said pretended Daniel H. Mulchoy, upon said land.

And your orator further shows that subsequently the said R. R. McCormick, or some one of his co-conspirators, unto your orator unknown, or some person acting for them, or on their behalf, presented and filed, or caused to be presented and filed in behalf of the said pretended Daniel H. Mulchoy, the outstanding duplicate certificate and receipt, issued and delivered as aforesaid, at your orator's said General Land Office, and thereupon requested the issuance of a patent upon said land in the name of the said pretended Daniel H. Mulchoy. And thereupon and on, to wit the 5th day of June, 1871, your orator by and through its properly authorized officers, fully relying upon the truthfulness of said certificates and receipts and of said affidavits, application and other papers aforesaid, and trusting and confiding in the acts of said register and receiver and believing that one Daniel H. Mulchoy had a good and legal right to pre-empt said land and to receive a patent therefor, and being greatly misled and deceived thereby, did issue its patent for the above described tract of land in the name of the said pretended Daniel H. Mulchoy, which patent purported to convey to him said tract of land, and which said patent was thereupon delivered to some one of said conspirators or to some one acting for them to your orator unknown.

And further complaining showeth your orator unto your honors that all the statements and allegations of said application, affidavits and proof were totally false, fraudulent and untrue; that no such person as Daniel H. Mulchoy ever made settlement of any kind on said tract of land at any time prior to the issuance of your orator's patent as aforesaid. That no such person as Daniel H. Mulchoy ever settled upon said land in good faith to appropriate it to his own exclusive use and benefit, and that no

such person as Daniel H. Mulchoy has ever erected any kind of a dwelling house, or made any other improvements in the way of building or cultivation upon said land, nor had he ever used said land for
20 agricultural and stock-raising or any other purpose; that the said pretended Daniel H. Mulchoy was not a citizen of Weld County at all.

And your orator alleges and charges the fact to be that prior to the issuance of its patent aforesaid, no settlement upon said tract of land had been made by any one, nor were there any improvements of any kind upon said tract of land, but the same was totally vacant, unoccupied, and uncultivated, and the entry aforesaid, affidavits and proof aforesaid, were each and all falsely and fraudulently made for the purpose of deceiving your orator, and of obtaining its patent as aforesaid, and for the purpose of appropriating said land to the use and benefit of the said R. R. McCormick and those associated with him, to your orator unknown.

And your orator further charges and alleges the fact to be that the said pretended pre-emptor, Daniel H. Mulchoy, and his said pretended witness, Paul Linger, were myths and ficticious persons, and that their names are ficticious names, and that no persons of such names have ever lived or been known in said Weld County at any time.

And your orator further alleges and charges the fact to be that if said affidavits and proof were ever made and sworn to by any one, as they purport to have been, that they were so made and sworn to by persons falsely pretending and representing themselves to be Daniel H. Mulchoy and Paul Linger, and that the same was done at the instance and by the request and with the knowledge of the said R. R. McCormick and of those acting and conspiring with him.

And further showeth your orator unto your honors that in further pursuance of the fraudulent scheme and combination hereinbefore set out, and to further and carry out and effect the same, the said R. R. McCormick and his co-conspirators, having determined to defraud your orator out of certain tracts of public land by falsely and fraudulently pretending that a certain person had fully complied with the law and with the rules and regulations of your Orator's General Land Office with regard to settlement and improvement upon said land, and in other respects did falsely
21 pretend to comply with the requirements of said law and said rules and regulations by filing a declaratory statement of the intention of the person hereinafter set out, declaring his intention to settle upon and pre-empt the tract of land hereinafter set out, and by giving all notice required by law, and by said rules and regulations prior to the making of the final entry and proof upon any portion of your orator's public domain under its pre-emption laws.

And some one of said conspirators did furthermore, on or about, to wit, the 27th day of October, 1870, write out, sign, and execute, or cause to be written out, signed and executed, in the name of, or purporting to be in the name of, a person calling himself Sylvanus Drew a certain application made by the pretended Sylvanus Drew to locate under the pre-emption laws of the United States, the S. W. ¼ Sec. 4, Tp. 1 N., R. 68 W., in the county of Weld, and Territory, now State, of Colorado, the same being one hundred and sixty acres, and which said application furthermore offered for said land the price required by law and which said application having

been made as aforesaid, was by some one of said conspirators filed with the register and receiver of your orator's land office in the city of Denver, Colorado.

And furthermore and at the time last aforesaid, or thereabouts, some one of said conspirators to your orator unknown, did write out, sign, and execute, or cause to be written out, signed, and executed, in the name of the said person called Sylvanus Drew a certain paper and affidavit which purported to have been subscribed and sworn to by the pretended Sylvanus Drew, before C. H. McLaughlin, receiver of your orator's said land office at Denver, and which said paper and affidavit is dated at the day last aforesaid, and in and by which the said Sylvanus Drew is represented and pretended to have testified, amongst other things, that he had never had the benefit of any right of pre-emption under the provisions of the act of Congress, approved September 4th, 1841, and entitled "An act to appropriate the proceeds of the sale of the public lands, and to grant pre-emption rights;" that he was not the owner of three hundred and twenty
22 acres of land in any State or Territory of the United States; that he had not settled upon and improved the same on speculation, but in good faith to appropriate it to his own exclusive use and benefit; that he had not directly or indirectly made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself.

And the conspirators aforesaid, or some one or more of them, having filed said application aforesaid and having written out said pretended affidavit aforesaid, did furthermore, in the matter of making final proof upon said tract of land in the name of the said pretended Sylvanus Drew, write out, sign, and execute, or cause to be written out, signed, and executed, a certain other paper, deposition, and affidavit, which purported to be the proof of the settlement and pre-emption of said described land by said pretended pre-emptor, made and sworn to by one called and pretended to be Mark Moltz, and who was pretended to be a witness for the said pretended Sylvanus Drew, by which said paper and affidavit it was represented and pretended that the said Mark Moltz had testified among other things that he was twenty-nine years of age, a farmer, residing in the county of Weld, and Territory, now State, of Colorado; that he had known Sylvanus Drew, the claimant, for over a year, and knew that on the first day of June, 1870, the said Drew was a citizen of the United States and a single man over the age of twenty-one years; that the said Drew was at the time of making said affidavit an inhabitant of and settled upon said tract of land, and that he had made settlement upon the same the first day of June, 1870, and had continued to reside thereon ever since; that he had erected a one-story frame dwelling-house, fully inclosed, 14 by 16 feet, with one door and two windows, with shingled roof and board floor, and had plowed three acres or more of said tract of land, and built thereon one hundred rods or more of post-and-board fence, and that he used the land for agricultural and stock-raising purposes, and had built thereon a frame stable and corral and had dug a well, and had not abandoned a residence on his own land to make this settlement.

23 And your orator further shows unto your honors that the said application and affidavits, having been made and written out as

aforesaid, the said conspirators, or some one of them to your orator unknown, filed the same with the register and receiver of your orator's land office at Denver, Colorado, in pursuance of law and the rules and regulations aforesaid, and at the same time tendered and deposited with the receiver aforesaid in cash the purchase price for said land as fixed by law.

And said papers having been filed and said money having been paid as aforesaid, the register of your orator's said land office issued a certificate in duplicate, in which it was recited that a person called Sylvanus Drew had on the day last aforesaid purchased the said described tract of land, and that on presentation of said certificate to the Commissioner of the General Land Office the said pretended Sylvanus Drew should be entitled to receive a patent for said described land; and at the same time the said receiver of your orator's land office issued a receipt, which recited that he had received from the said Sylvanus Drew the sum of four hundred dollars in payment for said described tract of land. And the said register and receiver delivered one of said duplicate receipts to the person purporting to represent the said pretended Sylvanus Drew, and thereupon they forwarded said affidavits, application, and other papers, together with one of said duplicate certificates and one of said duplicate receipts, to your orator's General Land Office, at Washington, for the purpose of having a patent upon said lands issued in the name of the said pretended Sylvanus Drew.

And your orator further shows that subsequently the said McCormick, or some one of his co-conspirators, presented and filed, or caused to be presented and filed, the other of said outstanding certificates and receipts issued and delivered as aforesaid to your orator's General Land Office and requested the issuance of a patent for said land in the name of the said pretended Sylvanus Drew. And thereupon, to wit, the 10th day of April, 1871, your orator, through and by its properly-authorized officers, relying upon the truthfulness of said affidavits, proofs, applications, certifi-
24 cates, and receipts made and filed as aforesaid, and trusting and confiding in the acts of said register and receiver and believing that a person named Sylvanus Drew had a good and legal right to pre-empt said tract of land and to receive a patent therefor, and being greatly misled and deceived thereby, did issue its patent for the above-described land in the name of the said Sylvanus Drew which purported to convey said tract of land, and which said patent was delivered to some one of said conspirators to your orator unknown.

And further complaining showeth your orator unto your honors that all the statements and allegations of said application, affidavits, and proof were totally false, fraudulent, and untrue; that no such person as Sylvanus Drew ever settled upon and improved said tract of land, or ever cultivated the same; that no such person ever resided on said tract of land at any time prior to the issuance of your orator's patent as aforesaid, nor had any such person attempted to appropriate said land to his own exclusive use and benefit; that no improvements of any kind, whether in the way of building, cultivation, or otherwise, had ever been made upon said land at the time aforesaid by any one, nor had said land ever been cultivated by any one, but said tract was totally vacant, unoccupied, and uncultivated; and said application, affidavits, and proof were totally false, and made for the sole purpose of deceiving your orator, and of obtaining its patent aforesaid, and for the purpose of appropriating said land to the use and benefit of the said McCormick and his said co-conspirators.

And your orator further charges and alleges the fact to be, that the said pretended pre-emptor, Sylvanus Drew, and his said pretended witness, Mark Moltz, were myths and fictitious persons, and that their names are fictitious names, that no such persons have ever lived or been known in said Weld County, and that if said affidavits and proof were actually made and sworn to by any one, as they purport to have been, they were so made and sworn to by persons falsely representing themselves to be Sylvanus Drew and Mark Moltz.

(5) And further showeth your orator unto your honors that in
25 further pursuance of the fraudulent scheme and combination hereinbefore set out, and to further and carry out and effect the same, the said R. R. McCormick and his co-conspirators, having determined to defraud your orator out of certain tracts of public land by falsely and fraudulently pretending that a certain person had fully complied with the law and with the rules and regulations of your orator's General Land Office with regard to settlement and improvement upon said land and in other respects, did falsely pretend to comply with the requirements of said law and the rules and regulations by filing a declaratory statement of the intention of the person hereinafter set out, declaring his intention to settle upon and pre-empt the tract of land hereinafter set out and by giving all notices required by law and by said rules and regulations prior to the making of the final entry and proof upon any portion of your orator's public domain under its pre-emption laws.

And some one of said conspirators did furthermore, on or about, to wit, the 31st day of August, 1870, write out, sign, and execute, or cause to be written out, signed and executed in the name of, or purporting to be in the name of, a person calling himself Thomas Faver, a certain application by or purporting to be an application made by the pretended Thomas Faver to locate under the pre-emption laws of the United States the N. E. ¼ Sec. 8, Tp. 1 N., R. 68 W., in the county of Weld, and Territory (now State) of Colorado, the same being one hundred and sixty acres, and which said application furthermore offered for said land the price required by law, and which said application having been made as aforesaid was by some one of said conspirators filed with the register and receiver of your orator's land office in the city of Denver, Colorado.

And furthermore, and at the time last aforesaid, or thereabouts, some one of said conspirators, to your orator unknown, did write out, sign and execute, or cause to be written out, signed and executed, in the name of the said person called Thomas Faver, a certain paper and affidavit which purported to have been subscribed and sworn to by the pretended Thomas Faver before C. H. McLaughlin, receiver of your orator's said land office at
Denver, and which said paper and affidavit is dated on the day last
26 aforesaid, and in and by which the said Thomas Faver is represented and pretended to have testified, amongst other things, that he had never had the benefit of any right of pre-emption under the provisions of the act of Congress approved September 4, 1841, and entitled "An act to appropriate the proceeds of the sale of the public lands, and to grant pre-emption rights;" that he was not the owner of three hundred and twenty acres of land in any State or Territory of the United States; that he had not settled upon or improved the same upon speculation, but in good faith to appropriate it to his own exclusive use and benefit; that he had

not directly or indirectly made any agreement or contract in any way or manner with any person or persons whatsoever by which the title which he might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself.

And the conspirators aforesaid or some one of them having filed said application aforesaid, and having written out said pretended affidavit aforesaid, did furthermore, in the matter of making final proof upon said tract of land in the name of the said pretended Thomas Faver, write out, sign, and execute, or cause to be written out, signed, and executed, a certain other paper, deposition, and affidavit which purported to be the proof of the settlement and pre-emption of said described land by said pretended pre-emptor, made and sworn to by one called and pretended to be William Roads, and who was pretended to be a witness for said pretended Thomas Faver, by which said paper and affidavit it was represented and pretended that the said pretended William Rhodes had testified, amongst other things, that he was thirty-three years of age, a farmer and stock-raiser, residing in the county of Weld and Territory of Colorado; that he had known Thomas Faver, the claimant, for three years, and knew that on the 4th day of January, A. D. 1868, he was a citizen of the United States; that the said Faver was the head of a family consisting of a wife and three children; that the claimant was at the time of making said affidavit an inhabitant and settled upon the N. E. ¼ of sec. 8, tp. 1 N., R. 68 W., in the county of Weld and Territory of Colorado; that he settled upon the same on the
27 10th day of October, 1867, and had since that time continued to reside thereon, and had erected a one-story log dwelling-house 18 by 24 feet, with one door and three windows, board floor and board roof, and plowed and cultivated twenty-five acres or more of said tract of land, and built thereon three hundred rods or more of post and board fence, and that he used said land for agriculture and stock-raising purposes, and had also built a log stable 14 by 20 feet, a large pole corral, and dug a well and irrigating ditches thereon, and had not abandoned a residence on his own land to make said settlement.

And your orator further shows unto your honors that said application and affidavits, having been made and written out, as aforesaid, the said conspirators, or some one of them to your orator unknown, filed the same with the register and receiver of your orator's land office at Denver, Colorado, in pursuance of law and the rules and regulations aforesaid, and at the same time tendered and paid to the receiver aforesaid, in cash, the purchase price for said land as fixed by law.

And said papers having been filed, and said money having been paid as aforesaid, the register of your orator's said land office issued a certificate in duplicate, in which it was recited that a person called Thomas Faver, had on the day last aforesaid purchased the said described tract of land, and that on presentation of said certificate to the Commissioner of the General Land Office, the said pretended Thomas Faver should be entitled to receive a patent for said described tract of land, and at the same time the said receiver of your orator's said land office issued a receipt which recited that he had received from the said Thomas Faver the sum of four hundred dollars in payment for said described tract of land. And the said register and receiver delivered one of said duplicate certificates and one of said duplicate receipts to the person purporting to represent the

said pretended Thomas Favor, and thereupon they forwarded said affidavits, application, and other papers, together with one of said duplicate certificates and one of said duplicate receipts, to your orator's General Land Office at Washington, for the purpose of having a patent upon said land issued in the name of the said pretended Thomas Faver.

And your orator further shows that subsequently the said McCormick, or some one of his co-conspirators, presented and filed, or caused to be presented and filed, the other of said outstanding certificates and receipts issued and delivered as aforesaid to your orator's General Land Office, and requested the issuance of a patent for said land in the name of the said pretended Thomas Faver, and thereupon and on, to wit, the 10th day of February, 1871, your orator by and through its duly authorized officers, relying upon the truthfulness of said affidavits, proofs, application, certificates, and receipts made and filed as aforesaid, and trusting and confiding in the acts of said register and receiver, and believing that the person named Thomas Faver had a good and legal right to preempt said tract of land and to receive a patent therefor, and being greatly misled and deceived thereby, did issue its patent for the above described land in the name of the said Thomas Faver, which purported to convey said tract of land, and which said patent was delivered to one of said conspirators, to your orator unknown.

And further complaining showeth your orator unto your honors that all the statements and allegations of said application, affidavits, and proof were totally false, fraudulent, and untrue; that no such person as Thomas Faver ever settled upon and improved said tract of land at any time prior to the issuance of your orator's patent as aforesaid, nor had any such person attempted to appropriate said land to his own exclusive use and benefit; that no improvements of any kind, whether in the way of building, cultivation, or otherwise, had ever been made upon said land at the time aforesaid by any one, nor had said land ever been cultivated by any one, but said tract was totally vacant, unoccupied, and uncultivated, and said application, affidavits, and proofs were totally false and made for the sole purpose of deceiving your orator and of obtaining its patent aforesaid, and for the purpose of appropriating said land to the use and benefit of the said McCormick and his said co-conspirators.

And your orator further charges and alleges the fact to be that the said pretended pre-emptor, Thomas Faver, and his said pretended witness, William Rodes were myths and ficticious persons, and that their
29 names are ficticious names, and that no such persons have ever lived or been known in said Weld County, and that if said affidavits and proof were actually made and sworn to by any one, as they purport to have been, they were so made and sworn to by persons falsely representing themselves to be Thomas Faver and William Roads.

(6) And further showeth your orator unto your honors that in further pursuance of the fraudulent scheme and combination hereinbefore set out, and to further and carry out and effect the same, the said R. R. McCormick and his co-conspirators, having determined to defraud your orator out of certain tracts of public land by falsely and fraudulently pretending that a certain person had fully complied with the law and the rules and regulations of your orator's General Land Office with regard to settlement and improvement upon said land and in other respects did falsely pretend to

comply with the requirements of said law and said rules and regulations by filing a declaritory statement of the intention of the person hereinafter set out, declaring *his* intention to settle upon and pre-empt the tract of land hereinafter set out, and by giving all notices required by law and by said rules and regulations prior to the making of the final entry and proof upon any portion of your orators public domain under its pre-emption laws.

And some of said conspirators did furthermore on or about to wit the 31 day of August, 1870, write out, sign and execute, or cause to be written out, signed, and executed, in the name of or purporting to be in the name of a person calling himself William Roads a certain application by, or purporting to be an application made by the pretended William Roads to locate under the pre-emption laws of the United States, the S. E. ¼ sec. 8, tp. 1 N. R., 68, W., in the county of Weld and Territory, now State, of Colorado, the same being one hundred and sixty acres, and which said application furthermore offered for said land the price required by law and which said application having been made as aforesaid, was by
30 some one of said conspirators filed with the register and receiver of your orator's land office in the city of Denver, Colorado.

And furthermore and at the time last aforesaid, or thereabouts, some one of said conspirators, to your orator unknown, did write out, sign, and execute, or cause to be written out, signed, and executed in the name of the said person called William Roads a certain paper and affidavit which purported to have been subscribed and sworn to by the pretended William Roads, before C. H. McLaughlin, receiver of your orator's said land office at Denver, Colorado, and which said paper and affidavit is dated on the day last aforesaid, and in and by which the said William Roads is represented and pretended to have testified, amongst other things, that he had never had the benefit of any right of pre-emption under the provisions of the acts of Congress approved September 4th, 1841, and entitled, "An act to appropriate the proceeds of the sale of the public lands and to grant pre-emption rights;" that he was not the owner of three hundred and twenty acres of land in any State or Territory of the United States; that he had not settled upon and improved the same on speculation, but in good faith to appropriate it to his own exclusive use and benefit; that he had not directly or indirectly, in any way or manner, made any agreement or contract, with any person or persons whatsoever, by which the title which he might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself.

And the conspirators aforesaid, or some one or more of them, having filed said application aforesaid, and having written out said pretended affidavit aforesaid, did furthermore in the matter of making final proof upon said tract of land in the name of the said pretended William Roads, write out, sign, and execute, or cause to be written out, signed, and executed a certain other paper, deposition, and affidavit, which purported to be the proof of the settlement and pre-emption of said described land by said pretended pre-emptor made and sworn to by one called and pretended to be
Thomas Faver, and who was pretended to be a witness for said
31 pretended William Roads. By which said paper and affidavit it was represented and pretended that the said pretended Thomas Faver had testified, amongst other things, that he was thirty-seven years

of age, a farmer, residing in the county of Weld and Territory of Colorado; that he had known William Roads, the claimant, for over three years last past, and knew that on the 4th day of January, A. D. 1868, he was a citizen of the United States; that the said Roads was the head of a family consisting of a wife and one child; that at the time of making said affidavit the said Roads was an inhabitant of and settled upon the SE. ¼ sec. 8, tp. 1 N., R. 68 W., in the county of Weld and Territory of Colorado; that such settlement was made on the 12th day of October, 1867, and that the said Roads had since that time continued to reside on said premises, and had erected a one-story log dwelling-house, fully enclosed, 18 by 20 feet, with one door and two windows, board floor, and board roof, had plowed and cultivated twenty acres or more of said tract of land, and built thereon two hundred and forty rods or more of post-and-pole fence; that he had used said land for agricultural and stock raising purposes, and had also built a stable and corral, and dug a well, and irrigating ditch thereon, and had not abandoned a residence on his own land to make said settlement.

And your orator further shows unto your honors that said application and affidavits having been made and written out as aforesaid, the said conspirators, or some one of them to your orator unknown, filed the same with the register and receiver of your orator's land office at Denver, Colorado, in persuance of law and the rules and regulations aforesaid, and at the same time tendered and paid to the receiver aforesaid, in cash, the purchase price for said land as fixed by law.

And said papers having been filed, and said money having been paid as aforesaid, the register of your orator's said land office issued a certificate in duplicate in which it was recited that a person called William Roads, had, on the day last aforesaid, purchased the said described tract of land, and
32 that on presentation of said certificate to the Commissioner of the General Land Office the said pretended William Roads should be entitled to receive a patent for said described tract of land, and at the same time the receiver of your orator's said land office issued a receipt which recited that he had received from William Roads the sum of four hundred dollars in payment for said described tract of land, and the said register and receiver delivered one of said duplicate certificates and one of said duplicate receipts to the person purporting to represent the said pretended William Roads, and thereupon they forwarded said affidavits, application, and other papers, together with one of said duplicate certificates and one of said duplicate receipts to your orator's General Land Office at Washington for the purpose of having a patent upon said land issued in the name of the said pretended William Roads.

And your orator further shows that subsequently the said McCormick, or some one of his co-conspirators, presented and filed, or caused to be presented and filed, the other of said outstanding certificates and receipts issued and delivered as aforesaid to your orator's General Land Office, and requested the issuance of a patent for said land in the name of the said pretended William Roads, and thereupon and on, to wit, the 10th day of February, 1871, your orator, by and through its duly authorized agents and officers, relying upon the truthfulness of said affidavits, proofs, application, certificates, and receipts, made and filed as aforesaid, and trusting and confiding in the acts of said register and receiver, and believing that a per-

son named William Roads had a good and legal right to pre-empt said land and to receive a patent therefor, and being greatly misled and deceived thereby, did issue its patent for the above described land in the name of the said William Roads, which purported to convey said tract of land, and which said patent was delivered to one of said conspirators to your orator unknown.

And further complaining showeth your orator unto your honors that all the statements and allegations of said application, affidavits, and proof were totally false, fraudulent, and untrue; that no such person as
33 William Roads ever settled upon and improved said tract of land, or ever cultivated the same; that no such person ever resided on said tract of land at any time prior to the issuance of your orator's patent as aforesaid, nor had any such person attempted to appropriate said land to his own exclusive use and benefit; that no improvements of any kind, whether in the way of building, cultivation, or otherwise, had ever been made upon said land at the time aforesaid by any one, nor had said land ever been cultivated by any one, but said tract was totally vacant, unoccupied, and uncultivated, and said affidavits, application, and proof were totally false and made for the sole purpose of deceiving your orator and of obtaining its patent aforesaid, and for the purpose of appropriating said land to the use and benefit of the said McCormick and his co-conspirators.

And your orator charges and alleges the fact to be that the said pretended pre-emptor, William Roads, and his said pretended witness, Thomas Faver, were myths and ficticious persons, and that their names are ficticious names, and that no such persons have ever lived or been known in said Weld County, and that if said affidavits and proof were actually made and sworn to by any one, as they purport to have been, they were so made and sworn to by persons falsely representing themselves to be William Roads and Thomas Faver.

(7) And further complaining showeth your orator unto your honors that in further pursuance of the fraudulent scheme and combination hereinbefore set out, and to further and carry out and effect the same, the said R. R. McCormick and his co-conspirators, having determined to defraud your orator out of certain tracts of public lands by falsely and fraudulently pretending that a certain person had fully complied with the law and the rules and regulations of your orator's General Land Office with regard to settlement and improvement upon said land, and in other respects did falsely pretend to comply with the requirements of said law and said rules and regulations by filing a declaratory statement of the intention of the person hereinafter set out, declaring his intention to
34 settle upon and pre-empt the tract of land hereinafter set out, and by giving all notices required by law and by said rules and regulations prior to the making of the final entry and proof upon any portion of your orator's public domain under its pre-emption laws.

And some one of said conspirators did furthermore on or about, to wit, the 17th day of October, 1870, write out, sign, and execute, or cause to be written out, signed and executed, in the name of, or purporting to be in the name of, a person calling himself John Newton, a certain application by, or purporting to be an application made by, the pretended John Newton to locate under the pre-emption laws of the United States, the N. E. ¼ sec. 10, tp. 1 N., R. 68 W., in the county of Weld, and Territory

(now State) of Colorado; the same being one hundred and sixty acres, and which said application furthermore offered for said land the price required by law, and which said application having been made as aforesaid, was by some one of said conspirators filed with the register and receiver of your orator's land office at the city of Denver, Colorado. And furthermore and at the time last aforesaid, or thereabouts, some one of said conspirators to your orator unknown, did write out, sign, and execute, or cause to be written out, signed and executed, in the name of the said person called John Newton, a certain paper and affidavit which purported to have been subscribed and sworn to by the pretended John Newton before C. H. McLaughlin, receiver of your orator's land office at Denver, Colorado, and which said paper and affidavit is dated on the day last aforesaid, and in and by which the said John Newton is represented and pretended to have testified, among other things, that he had never had the benefit of any right of or pre-emption under the provisions of the act of Congress approved September 4th, 1841, entitled "An act to appropriate the proceeds of the sale of the public lands and to grant pre-emption rights," that he was not the owner of three hundred and twenty acres of land in any State or Territory of the United States; that he had not settled upon and improved the same on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he had not directly or indirectly
35 in any way or manner made any agreement or contract with any person or persons whatsoever, by which the title which he might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself.

And the conspirators aforesaid, or some one or more of them, having filed said application as aforesaid, and having written out said pretended affidavit aforesaid, did furthermore in the way of making final proof upon said tract of land in the name of the said pretended John Newton write out, sign, and execute, or cause to be written out, signed, and executed, a certain other paper, deposition, and affidavit, which purported to be proof of the settlement and pre-emption of said described land by said pretended pre-emptor made and sworn to by one called and pretended to be David Oliver, and who was pretended to be a witness for said pretended John Newton. By which said paper and affidavit it was represented and pretended that the said pretended David Oliver had testified amongst other things that he was twenty-nine years of age, a farmer, residing in the county of Weld, and State of Colorado; that he had known John Newton, the claimant, for over one year, and knew that on the 12th day of May, 1870, he was a citizen of the United States, and a single man, over the age of twenty-one years; that said John Newton was at the time of making said affidavit settled upon the N. E. ¼ Sec. 10, Tp. 1, N., R. 68 W., county of Weld, and Territory of Colorado; that he had settled upon the same on the 12th day of May, 1870, and had since that time continued to reside thereon, and had erected a one-story frame dwelling house, fully enclosed, 14 by 16 feet with one door and one window, board floor and board roof, and had plowed for cultivation five acres or more of said tract of land, and built thereon one hundred rods or more of post and wire fence, and that claimant had not abandoned a residence on his own land to make said settlement.

And your orator further shows unto your honors that said application

and affidavits, having been made and written out as aforesaid, the said conspirators or some one of them to your orator unknown, filed the same with the register and receiver of your orator's land office at Denver, Colorado, in pursuance of law and the rules and regulations aforesaid,
36 and at the same time tendered and paid to the receiver aforesaid in cash the purchase price for said land as fixed by law.

And said papers having been filed, and said money having been paid as aforesaid, the register of your orator's said land office issued a certificate in duplicate in which it was recited that a person called John Newton had, on the day last aforesaid, purchased the said described tract of land, and that on presentation of said certificate to the Commissioner of the General Land Office the said pretended John Newton should be entitled to receive a patent for said described tract of land, and at the same time the receiver of your orator's said land office issued a receipt which recited that he had received from the said John Newton the sum of four hundred dollars in payment for said described tract of land. And the said register and receiver delivered one of said duplicate certificates and one of said duplicate receipts to the person purporting to represent the said pretended John Newton, and thereupon they forwarded said affidavits, application, and other papers, together with one of said duplicate certificates and one of said duplicate receipts, to your orator's General Land Office at Washington, for the purpose of having a patent upon said land issued in the name of the said pretended John Newton.

And your orator further shows that subsequently the said McCormick, or some one of his co-conspirators presented and filed, or caused to be presented and filed the other of said outstanding certificates and receipts issued and delivered as aforesaid to your orator's General Land Office and requested the issuance of a patent for said land in the name of the said pretended John Newton. And thereupon, and on, to wit, the 10th day of April, 1871, your orator, by and through its duly authorized officers, relying upon the truthfulness of said affidavits, proofs, application, certificates, and receipts, made and filed as aforesaid, and trusting and confiding in the acts of said register and receiver, believing that a person named John Newton had a good and legal right to pre-empt said land and
37 to receive a patent therefor, and being greatly misled and deceived thereby, did issue its patent for the above-described land in the name of the said John Newton, which purported to convey said tract of land, and which said patent was delivered to one of said conspirators to your orator unknown.

And further complaining showeth your orator unto your honors that all the statements and allegations of said application, affidavits, and proof were totally false, fraudulent, and untrue; that no such person as John Newton ever settled upon and improved said tract of land at any time prior to the issuance of your orator's patent as aforesaid, nor had any such person attempted to appropriate said land to his own exclusive use and benefit; that no improvements of any kind, whether in the way of building, cultivation, or otherwise, had ever been made upon said land at the time aforesaid by any one, nor had said land ever been cultivated, and said application, affidavits, and proof were totally false, and made for the sole purpose of deceiving your orator, and of obtaining its patent aforesaid, and for the purpose of appropriating said land to the use and benefit of the said McCormick and his said co-conspirators.

And your orator further charges and alleges the fact to be that the said pretended pre-emptor, John Newton, and his said pretended witness, David Oliver, were myths and ficticious persons, and that their names are ficticious names, and that no such persons have ever lived or been known in said Weld County, and that if said affidavits and proof were actually made and sworn to by any one, as they purport to have been, that they were so made and sworn to by persons falsely representing themselves to be John Newton and David Oliver.

(8) And further showeth your orator unto your honors that in further pursuance of the fraudulent scheme and combination hereinbefore set out, and to further and carry out and effect the same, the said R. R. McCormick and his co-conspirators, having determined to defraud your orator out of a certain tract of public land by falsely and fraudulently pretending that a certain person had fully complied with the law and with the rules and regulations of your orator's General Land Office with regard to settlement and improvement upon said land, and in other re-
38 spects did falsely pretend to comply with the requirements of the law and said rules and regulations by filing a declaratory statement of the intention of the person hereinafter set out, declaring his intention to settle upon and pre-empt the tract of land hereinafter set out, and by giving all notices required by law and by said rules and regulations prior to the making of the final entry and proof upon any portion of your orator's public domain under its pre-emption laws.

And some one of said conspirators did furthermore on or about, to wit, the 17th day of October, 1870, write out, sign, and execute, or cause to be written out, signed, and executed in the name of, or purporting to be in the name of, a person calling himself James R. Giddings, a certain application purporting to be an application made by the pretended James R. Giddings to locate under the pre-emption laws of the United States the N. W. ¼, Sec. 10, Tp. 1 N., R. 68 W., in the county of Weld, and Territory, now State, of Colorado, the same being one hundred and sixty acres, and which said application furthermore offered for said land the price required by law, and which said application having been made as aforesaid was by some one of said conspirators filed with the register and receiver of your orator's land office at the city of Denver, Colorado.

And furthermore and at the time last aforesaid, or thereabouts, some one of said conspirators, to your orator unknown, did write out, sign, and execute, or cause to be written out, signed, and executed, in the name of the said person called James R. Giddings, a certain paper and affidavit which purported to have been subscribed and sworn to by the pretended James R. Giddings before C. H. McLaughlin, receiver of your orator's land office at Denver, Colorado, aforesaid, and which said paper and affidavit is dated on the day last aforesaid, and in and by which the said James R. Giddings is represented and pretended to have testified, amongst other things, that he had never had the benefit of any right of pre-emption under the provision of the act of Congress approved September 4th, 1841, and entitled, "An act to appropriate the proceeds of the sale of the public lands,
39 and to grant pre-emption rights;" that he was not the owner of three hundred and twenty acres of land in any State or Territory of the United States; that he had not settled upon and improved the same on speculation, but in good faith to appropriate it to his own exclusive use

and benefit, and that he had not directly or indirectly made any agreement or contract in any way or manner with any person or persons whatsoever, by which the title which he might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself.

And the conspirators aforesaid, or some one or more of them, having filed said application as aforesaid, and having written out said pretended affidavit aforesaid, did furthermore in the matter of making final proof upon said tract of land in the name of the said pretended James R. Giddings, write out, sign, and execute, or cause to be written out, signed, and executed, a certain other paper, deposition, and affidavit, which purported to be proof of the settlement and pre-emption of said described land by said pretended pre-emptor, made and sworn to by one called and pretended to be James Kinsman, and who was pretended to be a witness for said pretended James R. Giddings. By which said paper and affidavit it was represented and pretended that the said pretended James Kinsman had testified, amongst other things, that he was twenty-eight years of age, a farmer, residing in the county of Weld, and Territory of Colorado; that he had known James R. Giddings, the claimant, for about two years, and knew that on the 16th day of May, 1870, he was a citizen of the United States; that claimant was a single man, over the age of twenty-one years; that at the time of making said affidavit he was an inhabitant of, and settled upon the NW¼ sec. 10, Tp. 1 N., R. 68 W., in the county of Weld and Territory of Colorado; that he made said settlement on the 16th day of May, 1870, and had since that time continued to reside thereon, and had erected a one-story frame dwelling-house, fully enclosed, 16 by 18 feet, with one door and two windows, shingled roof and board floor, had plowed and broken for cultivation twelve acres or more of said tract of land, and built thereon over two hundred rods of post and wire fence, and had also built on said tract of land a frame stable and correl, had dug a well thereon, and had not abandoned a residence on his own land to make said settlement.

And your orator further shows unto your honors that said application and affidavits, having been made and written out as aforesaid, the said conspirators, or some one of them to your orator unknown, filed the same with the register and receiver of your orator's said land office at Denver, Colorado, in pursuance of law and the rules and regulations aforesaid, and at the same time tendered and paid to the receiver aforesaid, in cash, the purchase price for said land as fixed by law.

And said papers having been filed, and said money having been paid as aforesaid, the register of your orator's said land office issued a certificate in duplicate, in which it was recited that a person called James R. Giddings had, on the day last aforesaid, purchased the said described tract of land, and that on presentation of said certificate to the Commissioner of the General Land Office the said pretended James R. Giddings should be entitled to receive a patent for said described tract of land, at the same time the receiver of your orator's said land office issued a receipt which recited that he had received from the said James R. Giddings the sum of four hundred dollars in payment for said described tract of land. And the said register and receiver delivered one of said duplicate certificates and one of said duplicate receipts to the person purporting to represent the

said pretended James R. Giddings, and thereupon they forwarded said affidavits, application, and other papers, together with one of said duplicate certificates and one of said duplicate receipts, to your orator's General Land Office at Washington for the purpose of having a patent upon said land issued in the name of the said pretended James R. Giddings.

And your orator further shows that subsequently the said McCormick, or some one of his co-conspirators, presented and filed, or caused to be presented and filed, the other of said outstanding certificates and receipts issued and delivered as aforesaid, to your orator's General Land Office, and requested the issuance of a patent for said land in the name of the

41 said pretended James R. Giddings, and thereupon and on, to wit, the 10th day of April, 1871, your orator, through and by its duly authorized officers, relying upon the truthfulness of said affidavits, proofs, application, certificates and receipts, made and filed as aforesaid, and believing that a person named James R. Giddings had a good and legal right to pre-empt said land and to receive a patent therefor, and trusting and confiding in the acts of said register and receiver, and being greatly misled and deceived thereby, did issue its patent for the above-described land in the name of the said James R. Giddings, which purported to convey said tract of land, and which said patent was delivered to one of said conspirators, to your orator unknown.

And further complaining showeth your orator unto your honors that all the statements and allegations of said application, affidavits and proof were totally false; fraudulent and untrue; that no such person as James R. Giddings ever settled upon or improved said tract of land at any time prior to the issuance of your orator's patent as aforesaid, nor had any such person attempted to appropriate said land to his own exclusive use and benefit; that no improvements of any kind, whether in the way of building, cultivation, or otherwise, had ever been made upon said land at the time aforesaid by any one, nor had said land ever been cultivated by any one, but said tract was totally vacant, unoccupied, and uncultivated, and said application, affidavits, and proof were totally false, fraudulent, and untrue, and made for the sole purpose of appropriating said land to the use of the said McCormick and his co-conspirators.

And your orator further charges and alleges the fact to be that the said pretended pre-emptor, James R. Giddings, and his said pretended witness, James Kinsman, were myths and ficticous persons, and that their names were ficticious names, and that no such persons had ever lived or been known in said Weld County, and that if said affidavits and proof were actually made and sworn to by any one, as they purport to have been, that they were so made and sworn to by persons falsely representing themselves to be James R. Giddings and James Kinsman.

42 (9) And further showeth your orator unto your honors that, in further pursuance of the fraudulent scheme and combination hereinbefore set out, and to further and carry out and effect the same, the said R. R. McCormick and his co-conspirators, having determined to defraud your orator out of certain tracts of public land by falsely and fraudulently pretending that a certain person had fully complied with the law and the rules and regulations of your orator's General Land Office with regard to settlement and improvement upon said land, and in other respects did falsely pretend to comply with said law and the rules and regulations by

filing a declaratory statement of the intention of the person hereinafter set out, declaring his intention to settle upon and pre-empt the tract of land hereinafter set out, and by giving all notices required by law and by said rules and regulations prior to the making of the final entry and proof upon any portion of your orator's public domain under its pre-emption laws.

And some one of said conspirators did furthermore on or about, to wit, the 17th day of October, 1870, write out, sign, and execute, or cause to be written out, signed, and executed, in the name of, or purporting to be in the name of, a person calling himself James Kinsman, a certain application purporting to be an application made by the pretended James Kinsman to locate, under the pre-emption laws of the United States, the S. E. ¼ Sec. 10, Tp. 1 N., R. 68 W., in the county of Weld, and Territory, (now State) of Colorado, the same being one hundred and sixty acres, and which said application furthermore offered for said land the price required by law, which said application having been made as aforesaid, was by some one of said conspirators filed with the register and receiver of your orator's land office at the city of Denver, Colorado.

And furthermore, and at the time last aforesaid, or thereabouts, some one of said conspirators, to your orator unknown, did write out, sign, and execute, or cause to be written out, signed, and executed, in the name of the said person called James Kinsman, a certain paper and affidavit which
43 purported to have been subscribed and sworn to by the said pretended James Kinsman before C. H. McLaughlin, receiver of your orator's said land office at Denver, Colorado, and which said paper is dated on the day last aforesaid, and in and by which the said James Kinsman is represented, and pretended, amongst other things, that he had never had the benefit of any right of pre-emption under the provisions of the act of Congress approved September 4th, 1841, and entitled "An act to appropriate the proceeds of the sale of the public lands and to grant pre-emption rights;" that he was not the owner of three hundred and twenty acres of land in any State or Territory of the United States; that he had not settled upon and improved the same on speculation, but in good faith to appropriate it to his own exclusive use and benefit; and that he had not directly or indirectly in any way or manner made any agreement or contract with any person or persons whatsoever by which the title which he might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself.

And the conspirators aforesaid, or some one or more of them, having filed said application as aforesaid, did furthermore in the matter of making final proof upon said tract of land in the name of the said pretended James Kinsman, and having written out said pretended affidavit aforesaid, write out, sign, and execute, or cause to be written out, signed, and executed, a certain other paper, deposition, and affidavit, which purported to be proof of the pre-emption and settlement of said described tract of land by said pretended pre-emptor, made and sworn to by one called and pretended to be James R. Giddings, and who was pretended to be a witness for said pretended James Kinsman; by which said paper and affidavit it was represented and pretended that the said pretended James R. Giddings had testified, amongst other things, that he was thirty-six years of age, a farmer, residing in the county of Weld and Territory of Colorado; that he had known

James Kinsman, the claimant, for about two years, and knew that on the 12th day of May, A. D. 1870, he was a citizen of the United States; that the said Kinsman was a single man, over the age of twenty-one years; that at the time of making said affidavit claimant was an inhabitant of
44 and settled upon the SE. ¼ Sec. 10, Tp. 1 N., R. 68 W., in the county of Weld and Territory of Colorado; that he first settled upon said tract on the 12th day of May, 1870, and had since that time continued to reside thereon, and had erected a one-story frame dwelling, 18 by 20 feet, with one door, two windows, shingled roof, board floor, and had plowed ten acres or more of said tract of land, and built thereon two hundred rods or more of post and wire fence, and had also built thereon a stable, dug a well, and that he had not abandoned a residence on his own land to make said settlement.

And your orator further shows unto your honors that the said application and affidavits having been made and written out as aforesaid, the said conspirators or some one of them to your orator unknown, filed the same with the register and receiver of your orator's said land office at Denver, Colorado, in pursuance of law and the rules and regulations aforesaid, and at the same time tendered and paid to the receiver aforesaid, in cash, the purchase price for said land as fixed by law.

And said papers having been filed, and said money having been paid as aforesaid, the register of your orator's said land office, issued a certificate in duplicate in which it was recited that a person called James Kinsman, had on the day last aforesaid, purchased the said described tract of land, and that on presentation of said certificate to the Commissioner of the General Land Office the said pretended James Kinsman should be entitled to receive a patent for said described tract of land, and at the same time the receiver of your orator's said land office issued a receipt which recited that he had received from the said James Kinsman the sum of four hundred dollars in payment for said described tract of land. And the said register and receiver delivered one of said duplicate certificates and one of said duplicate receipts to the person purporting to represent the said pretended James R. Giddings and thereupon they forwarded said affidavits, application, and other papers together with one of said duplicate certificates and one of said duplicate receipts to your orator's General Land Office at Washington, for the purpose of having a patent upon said
45 land issued in the name of the said pretended James Kinsman.

And your orator further shows that subsequently the said McCormick, or some one of his said co-conspirators, presented and filed, or caused to be presented and filed, the other of said outstanding certificates and receipts issued and delivered as aforesaid, to your orator's General Land Office, and requested the issuance of a patent for said land in the name of the said pretended James Kinsman. And thereupon and on, to wit, the 10th day of April, 1871, your orator, by and through its authorized officers, relying upon the truthfulness of said affidavits, proofs, application, certificates, and receipts made and filed as aforesaid, and trusting and confiding in the acts of said register and receiver, and believing that a person named James Kinsman had a good and legal right to preempt said land and to receive a patent therefor, and being greatly misled and deceived thereby, did issue its patent for the above-described land in the name of the said James Kinsman, which purported to convey said

tract of land, and which said patent was delivered to one of said conspirators, to your orator unknown.

And further complaining, showeth your orator unto your honors that all the statements and allegations of said application, affidavits, and proof were totally false, fraudulent, and untrue; that no such person as James Kinsman ever settled upon and improved said tract of land, or ever cultivated the same; that no such person ever resided upon said tract of land at any time prior to the issuance of your orator's patent as aforesaid, nor had any such person attempted to appropriate said land to his own exclusive use and benefit; that no improvements of any kind, whether in the way of building, cultivation, or otherwise, had ever been made upon said land at the time aforesaid, by any one, nor had said land been cultivated by any one, but said tract was totally vacant, unoccupied, and uncultivated and said application, affidavits, and proof were totally false and made for the sole purpose of deceiving your orator, and of obtaining its patent aforesaid, and for the purpose of appropriating said land to the use and benefit of the said McCormick and his co-conspirators.

46 And your orator further charges and alleges the fact to be that the said pretended James Kinsman and his said pretended witness, James R. Giddings, were myths and ficticious persons, and that their names are ficticious names, and that no such persons have ever lived or been known in said Weld County, and that if said affidavits and proofs were actually made and sworn to by any one, as they purport to have been, that they were so made and sworn to by persons falsely representing themselves to be James Kinsman and James R. Giddings.

(10) And further showeth your *honor* unto your honors that in further pursuance of the fraudulent scheme and combination hereinbefore set out, and to further and carry out and effect the same, the said R. R. McCormick and his co-conspirators, having determined to defraud your orator out of certain tracts of public land by falsely and fraudulently pretending that a certain person had fully complied with the law and the rules and regulations of your orator's General Land Office with regard to settlement and improvement upon said land and in other respects did falsely pretend to comply with the requirements of said law and said rules and regulations by filing a declaratory statement of the intention of the person, hereinafter set out, declaring his intention to settle upon and pre-empt the tracts of land hereinafter set out, and by giving all notices required by law and by said rules and regulations prior to the making of the final entry and proof upon any portion of your orator's public domain under its pre-emption laws.

And some one of said conspirators did furthermore on or about, to wit, the 17th day of October, 1870, write out, sign, and execute, or cause to be written out, signed, and executed, in the name of, or purporting to be in the name of, a person calling himself David Oliver, a certain application purporting to be an application made by the pretended David Oliver to locate under the pre-emption laws of the United States the SW. ¼ Sec. 10, Tp. 1 N., R. 68 W., in the county of Weld and Territory (now

47 State) of Colorado, the same being one hundred and sixty acres, and which said application furthermore offered for said land the price required by law, which said application having been made as aforesaid, was by some one of said conspirators filed with the register and receiver of your orator's land office at the city of Denver, Colorado.

And furthermore and at the time last aforesaid, or thereabouts, some one of said conspirators, to your orator unknown, did write out, sign and execute, or cause to be written out, signed and executed, in the name of the said person called David Oliver a certain paper and affidavit which purported to have been subscribed and sworn to by the said pretended David Oliver before C. H. McLaughlin, receiver of your orator's said land office at Denver, Colorado, and which said paper and affidavit is dated on the day last aforesaid, and in and by which the said David Oliver is represented and pretended to have testified, amongst other things, that he had never had the benefit of any right of pre-emption under the provision of the act of Congress approved September 4th, 1841, and entitled "An act to appropriate the proceeds of the sale of the public lands, and to grant pre-emption rights;" that he was not the owner of three hundred and twenty acres of land in any State or Territory of the United States; that he had not settled upon and improved said tract of land on speculation, but in good faith to appropriate it to his own exclusive use and benefit; and that he had not, directly or indirectly in any way or manner with any person or persons whatsoever, made any agreement or contract by which the title which he might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself.

And the conspirators aforesaid, or some one or more of them, having filed said application as aforesaid, did furthermore, in the matter of making final proof upon the said tract of land in the name of the said pretended David Oliver, and having written out said pretended affidavit aforesaid, write out, sign and execute, or cause to be written out, signed and executed,
a certain other paper, deposition and affidavit, which purported
48 to be proof of the pre-emption and settlement of said described tract of land by said pretended pre-emptor, made and sworn to by one called and pretended to be John Newton, and who was pretended to be a witness for said pretended David Oliver, by which said paper and affidavit it was represented and pretended that the said pretended John Newton had testified, amongst other things, that he was twenty-three years of age, a farmer, residing in the county of Weld, and Territory of Colorado, that he had known David Oliver, the claimant, for over one year, and knew that on the 13th day of May, A. D. 1870, he was a citizen of the United States; that claimant was a single man over the age of twenty-one years; that at the time of making said affidavit the claimant was an inhabitant of and settled upon the S. W. ¼ Sec. 10, Tp. 1 N., R. 68 W., in the county of Weld and Territory of Colorado; that he first settled upon said premises upon the 13th day of May, 1870, and had since that time continued to reside thereon and had erected a one-story frame dwelling house, fully enclosed, 16 by 20 feet, with one door, two windows, shingled roof, and board floor, and had plowed eight acres or more of said tract of land, built thereon one hundred rods or more of post and wire fence, and also built a frame stable thereon, and had not abandoned a residence on his own land to make said settlement.

And your orator further shows unto your honors that said affidavits having been made and written out as aforesaid, the said conspirators, or some one of them to your orator unknown, did file the same with the register and receiver of your orator's said land-office at Denver, Colorado, in

pursuance of the law and the rules and regulations aforesaid, and at the same time tendered and deposited with the receiver aforesaid in cash the purchase price for said land as fixed by law.

And said papers having been filed and said money having been paid as aforesaid, the register of your orator's said land-office issued a certificate in duplicate, in which it was recited that a person called David Oliver had on the day last aforesaid purchased the said described tract of land, and that on presentation of said certificate to the Commissioner of the General Land Office the said pretended David Oliver should be entitled to
49 receive a patent for said described tract of land, and at the same time the receiver of your orator's said land-office issued a receipt which recited that he had received from the said David Oliver the sum of four hundred dollars in payment for said described tract of land, and the said register and receiver delivered one of said duplicate certificates and one of said duplicate receipts to the person purporting to represent the said pretended David Oliver, and thereupon they forwarded said affidavits, application, and other papers, together with one of said duplicate certificates and one of said duplicate receipts to your orator's General Land Office at Washington for the purpose of having a patent upon said land issued in the name of the said pretended David Oliver.

And your orator further shows that subsequently the said McCormick or some one of his said conspirators presented and filed, or caused to be presented and filed, the other of said outstanding certificates and receipts issued and delivered as aforesaid, to your orator's General Land Office and requested the issuance of a patent for said land in the name of the said pretended David Oliver. And thereupon and on, to wit, the 10th day of April, 1871, your orator through and by its duly authorized officers, relying upon the truthfulness of said affidavits, proofs, application, certificates and receipts made and filed as aforesaid, and believing that a person named David Oliver had a good and legal right to pre-empt said land and to receive a patent therefor, and trusting and confiding in the acts of said register and receiver, and being greatly misled and deceived thereby, did issue its patent for the above described land in the name of the said David Oliver, which purported to convey said tract of land, and which said patent was delivered to one of said conspirators, to your orator unknown.

And further complaining showeth your orator unto your honors that all the statements and allegations of said application, affidavits and proof were totally false, fraudulent and untrue; that no such person ever settled upon and improved said tract of land, or ever cultivated the same; that no such person as David Oliver ever resided upon said tract of land
50 at any time prior to the issuance of your orator's patent as aforesaid, nor had any such person attempted to appropriate said land to his own exclusive use and benefit; that no improvement of any kind, whether in the way of building, cultivation, or otherwise, had ever been made upon said land at the time aforesaid by any one, but said tract was totally vacant, unoccupied and uncultivated, and said application, affidavits, and proof were totally false, and made for the sole purpose of deceiving your orator, and of obtaining its patent aforesaid, for the purpose of appropriating said land to the use and benefit of the said McCormick and his co-conspirators.

And your orator further charges and alleges the fact to be that the said

pretended pre-emptor, David Oliver, and his said pretended witness, John Newton, were myths and fictitious persons, and that their names were fictitious names, and that no such persons had ever lived or been known in said Weld County, and that if said affidavits and proof were actually made and sworn to by any one as they purported to have been, that they were so made and sworn to by persons falsely representing themselves to be David Oliver and John Newton.

[44]

And further showeth your orator unto your honors that in further pursuance of the fraudulent scheme and combination hereinbefore set out and to further and carry out and effect the same, the said R. R. McCormick and his co-conspirators, having determined to defraud your orator out of certain tracts of public land by falsely and fraudulently pretending that a certain person had fully complied with the law and the rules and regulations of your orator's General Land Office with regard to settlement and improvement upon said land and in other respects did falsely pretend to comply with the requirements of said law and said rules and regulations by filing a declaratory statement of the intention of the person, hereinafter set out, declaring his intention to settle upon and pre-empt the tract of land hereinafter set out, and by giving all notices required by law and said rules and regulations prior to the making of the final entry and
51 proof upon any portion of your orator's public domain under its pre-emption laws.

And some one of said conspirators did furthermore, on or about, to wit, the 31st day of October, 1871, write out, sign, and execute, or cause to be written out, signed, and executed, in the name of, or purporting to be in the name of, a person calling himself Edward Drake, a certain application purporting to be made by one Edward Drake, to locate under the pre-emption laws of the United States the N. E. ¼ sec. 14, tp. 1 N., R. 68 W., in the county of Weld, and Territory (now State) of Colorado, the same being one hundred and sixty acres, and which said application furthermore offered for said land the price required by law, which said application having been made as aforesaid, was by some one of said conspirators filed with the register and receiver of your orator's land office at the city of Denver, Colorado.

And furthermore and at the time last aforesaid, or thereabouts, some one of said conspirators, to your orator unknown, did write out, sign, and execute, or cause to be written out, signed, and executed, in the name of the said person called Edward Drake, a certain paper and affidavit which purported to have been subscribed and sworn to by the said pretended Edward Drake before C. H. McLaughlin, receiver of your orator's said land office at Denver, Colorado, and which said paper is dated on the day last aforesaid, and in and by which the said Edward Drake is represented and pretended to have testified, amongst other things, that he had never had the benefit of any right of pre-emption under the provisions of the act of Congress approved September 4th, 1841, and entitled "An act to appropriate the proceeds of the sale of the public lands, and to grant pre-emption rights;" that he was not the owner of three hundred and twenty acres of land in any State or Territory of the United States; that he had not settled upon and improved said land on speculation, but in good faith to appropriate it to his own exclusive use and benefit; and that he had not,

directly or indirectly in any way or manner made any agreement or contract with any person or persons whatsoever by which the title which he might acquire from the Government of the United States should
52 inure in whole or in part to the benefit of any person except himself.

And the conspirators or some one or more of them having filed said application as aforesaid, and having written out said pretended affidavit aforesaid, did furthermore in the matter of making final entry and proof upon said land in the name of the said pretended Edward Drake, write out, sign, and execute, or cause to be written out, signed, and executed a certain other paper, deposition, and affidavit which purported to be proof of the pre-emption and settlement of said described tract of land by said pretended pre-emptor made and sworn to by one called and pretended to be Emanuel J. Fisk, and who was pretended to be a witness for said pretended Edward Drake, by which said paper and affidavit it was represented and pretended that the said pretended Emanuel J. Fisk, had testified amongst other things, that he was twenty-seven years of age, a farmer residing in the county of Weld and Territory of Colorado; that he had known Edward Drake, the claimant, for over two years, and knew that on the 22nd day of May, A. D. 1870, he was a citizen of the United States; that claimant was a single man over the age of twenty-one years; that he first settled upon said premises on the 22nd day of May, 1870, and had since that time continued to reside thereon, and had erected a one-story frame dwelling house, fully enclosed 14 by 16 feet with one door and two windows, shingled roof and board floor, and had plowed and cultivated five acres or more of said tract of land, and built thereon fifty rods or more of post-and-board fence; that he had also built thereon a frame stable and corral, and had not abandoned a residence on his own land to make said settlement.

And your orator further shows unto your honors that said affidavits and application having been made as aforesaid, the said conspirators or some of them to your orator unknown did file the same with the register and receiver of your orator's said land office at Denver, Colorado, in pursuance of law and the rules and regulations aforesaid, and at the same time tendered and deposited with the receiver aforesaid in cash the purchase price for said land as fixed by law.

53 And said papers having been filed and said money having been paid as aforesaid, the register of your orators said land office issued in duplicate a certificate in which it was recited that a person called Edward Drake, had, on the day last aforesaid, purchased the said described tract of land, and that on presentation of said certificate to the Commissioner of the General Land Office, the said pretended Edward Drake should be entitled to receive a patent for said described tract of land, and at the same time the receiver of your orator's said land office issued a receipt which recited that he had received from the said Edward Drake the sum of four hundred dollars in payment for said described tract of land. And the said register and receiver delivered one of said duplicate certificates and one of said duplicate receipts to the person purporting to represent the said pretended Edward Drake, and thereupon they forwarded said affidavits, application, and other papers, together with one of said duplicate certificates and one of said duplicate receipts to your

orator's General Land Office at Washington, for the purpose of having a patent upon said land issued in the name of the said pretended Edward Drake.

And your orator further shows that subsequently the said McCormick or some one of his said co-conspirators, presented and filed, or caused to be presented and filed, the other of said outstanding duplicate certificates and receipts issued and delivered as aforesaid, to you orator's General Land Office and requested the issuance of a patent for said land in the name of the said pretended Edward Drake. And thereupon, and on, to wit, the 10th day of April, 1871, your orator by and through its duly authorized officers, relying upon the truthfulness of said affidavits, application, proof, certificates, and receipts, made and filed as aforesaid, and trusting and confiding in the acts of said register and receiver, and believing that a person named Edward Drake had a good and legal right to pre-empt said land and to receive a patent therefor, and being greatly misled and deceived thereby, did issue its patent for the above-described land
54 in the name of the said Edward Drake, which purported to convey said tract of land, and which said patent was delivered to one of said conspirators, to your orator unknown.

And further complaining showeth your orator unto your honors that all the statements and allegations of said application, affidavits, and proof were totally false, fraudulent, and untrue; that no such person as Edward Drake ever settled upon and improved said tract of land, or ever cultivated the same; that no such person ever resided on said tract of land at any time prior to the issuance of your orator's patent, as aforesaid, nor had any such person attempted to appropriate said land to his own exclusive use and benefit; that no improvements of any kind, whether in the way of building, cultivation, or otherwise, had ever been made upon said land at the time aforesaid by any one, nor had said land ever been cultivated by any one, but said tract was totally vacant, unoccupied, and uncultivated, and said application, affidavits, and proof were totally false and made for the sole purpose of deceiving your orator and of obtaining its patent aforesaid, and for the purpose of appropriating said land to the use and benefit of the said McCormick and his co-conspirators.

And your orator further charges and alleges the fact to be that the said pretended pre-emptor, Edward Drake, and his said pretended witness, Emanuel J. Fisk, were myths and ficticious persons, and that their names are ficticious names, and that no such persons have ever lived or been known in said Weld County, and that if said affidavits and proofs were actually made and sworn by any one to as they purport to have been, that they were so made and sworn to by persons falsely representing themselves to be Edward Drake and Emanuel J. Fisk.

(12) And further showeth your orator unto your honors that in further pursuance of the fraudulent scheme and combination hereinbefore set out and to further and carry out and effect the same, the said R. R. McCormick and his co-conspirators having determined to defraud your
55 orator out of certain tracts of public land by falsely and fraudulently pretending that a certain person had fully complied with the law and the rules and regulations of your orator's General Land Office with regard to settlement and improvement on said land, and in other respects did falsely pretend to comply with the requirements of said law and said rules

and regulations by filing a declaratory statement of the intention of the person hereinafter set out, and declaring his intention to settle upon and pre-empt the tract of land hereinafter set out, and by giving all notices required by law and by said rules and regulations prior to the making of the final entry and proof upon any portion of your orator's public domain under its pre-emption laws.

And some one of said conspirators did furthermore on or about, to wit, the 31st day of October, 1870, write out, sign, and execute, or cause to be written out, signed, and executed, in the name of, or purporting to be in the name of, a person calling himself Emanuel J. Fisk, a certain application by, or purporting to be an application made by, the pretended Emanuel J. Fisk, to locate under the pre-emption laws of the United States, the NW. ¼ Sec. 12, Tp. 1 N., R. 68 W., in the county of Weld, State of Colorado, the same being one hundred and sixty acres, and which said application further more offered for said land the price required by law, and which said application having been made as aforesaid, was by some one of said conspirators filed with the register and receiver of your orator's land office at the city of Denver, Colorado.

And furthermore, and at the time last aforesaid, or thereabouts, some one of said conspirators, to your orator unknown, did write out, sign, and execute, or cause to be written out, signed, and executed, in the name of the said person called Emanuel J. Fisk, a certain paper and affidavit which purported to have been subscribed and sworn to by the said pretended Emanuel J. Fisk, before C. H. McLaughlin, receiver of your orator's said land office at Denver, Colorado, and which said paper and affidavit is dated on the day last aforesaid, and in and by which said
56 Emanuel J. Fisk is represented and pretended to have testified, amongst other things, that he had never had the benefit of any right of pre-emption under the provisions of the act of Congress approved September 4th, 1841, and entitled "An act to appropriate the proceeds of the sale of the public lands and to grant pre-emption rights;" that he was not the owner of three hundred and twenty acres of land in any State or Territory of the United States; that he had not settled upon and improved said land on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he had not directly or indirectly in any way or manner made any agreement or contract with any person or persons whatsoever by which the title which he might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself.

And the conspirators aforesaid, or some one or more of them, having filed said application as aforesaid, and having written out said pretended affidavit as aforesaid, did furthermore in the matter of making final entry and proof upon said land in the name of the said pretended Emanuel J. Fisk, write out, sign and execute, or cause to be written out, signed and executed, a certain other paper, deposition, and affidavit, which purported to be proof of the settlement and pre-emption of said described tract of land by said pretended pre-emptor, made and sworn to by one called and pretended to be Edward Drake, and who was pretended to be a witness for said pretended Emanuel J. Fisk. By which said paper and affidavit it was represented and pretended that the said pretended Edward Drake had testified amongst other things that he was thirty-seven years of age, a

farmer, residing in the county of Weld, and Territory of Colorado; that he had known Emanuel J. Fisk, the claimant, for over two years, and knew that on the 2nd day of June, 1870, he was a citizen of the United States; that the said claimant was the head of a family consisting of a wife and one child; that at the time of making said affidavit claimant was an inhabitant of and settled upon the N. W. ¼ Sec. 14, Tp. 1 N., R. 68 W.,
57 in the county of Weld and Territory of Colorado; that he first settled upon said premises on the 2d day of June, 1870, and had since that time continued to reside thereon, and had erected on said premises a one-story frame dwelling house, fully enclosed, 16 by 20 feet, with two doors and four windows, shingled roof and board floor, had plowed and cultivated three acres or more of said tract of land, and built thereon one hundred rods or more of post and board fence, and he had also built a frame stable and corral, milk house, chicken house, and dug a well thereon, and had not abandoned a residence on his own land to make said settlement.

And your orator further shows unto your honors that said affidavit and application, having been made as aforesaid, the said conspirators, or some one of them to your orator unknown, did file the same with the register and receiver of your orator's said land office at Denver, Colorado, in pursuance of law and the rules and regulations aforesaid, and at the same time tendered and deposited with the receiver aforesaid, in cash, the purchase price for said land as fixed by law.

And said papers having been filed and said money having been paid as aforesaid, the register of your orator's said land office issued a certificate in duplicate in which it was recited that a person called Emanuel J. Fisk had, on the day last aforesaid, purchased the said described tract of land, and that on presentation of said certificate to the Commissioner of the General Land Office, the said pretended Emanuel J. Fisk should be entitled to receive a patent for said described tract of land, and at the same time the receiver of your orators's said land office issued a receipt which recited that he had received from the said Emanuel J. Fisk the sum of four hundred dollars in payment for said described tract of land. And the said register and receiver delivered one of said duplicate certificates and one of said duplicate receipts to the person purporting to represent the said pretended Emanuel J. Fisk, and thereupon they forwarded said affidavits, application, and other papers, together with one of said duplicate certificates and one of said duplicate receipts, to your orator's General Land
58 Office at Washington, for the purpose of having a patent upon said land issued in the name of the said pretended Emanuel J. Fisk.

And your orator further shows that subsequently the said McCormick, or some one of his said co-conspirators, presented and filed the other of said outstanding duplicate certificates and receipts issued and delivered as aforesaid to your orator's General Land Office, and requested the issuance of a patent for said land in the name of the said pretended Emanuel J. Fisk. And thereupon and on, to wit, the 10th day of April, 1871, your orator, by and through its duly authorized officers, relying upon the truthfulness of said affidavits, proofs, application, certificates and receipts, made and filed as aforesaid, and trusting and confiding in the acts of said register and receiver, and believing that the said Emanuel J. Fisk had a good and legal right to pre-empt said land, and to receive a

patent therefor, and being greatly misled and deceived thereby, did issue its patent for the above described tract of land in the name of the said Emanuel J. Fisk, which purported to convey said tract, and which said patent was delivered to one of said conspirators to your orator unknown.

And further complaining showeth your orator unto your honors that all the statements and allegations of said application, affidavits, and proof were totally false, fraudulent, and untrue; that no such person as Emanuel J. Fisk had ever settled upon and improved said tract of land or ever cultivated the same; that no such person ever resided on said tract of land at any time prior to your orator's patent as aforesaid, nor had any such person attempted to appropriate said land to his own exclusive use and benefit; that no improvements of any kind, whether in the way of building, cultivation, or otherwise had ever been made upon said land at the time aforesaid by any one, but said tract was totally vacant, unoccupied and uncultivated, and said application, affidavits, and proof were totally false, and made for the sole purpose of deceiving your orator and of obtaining its patent aforesaid, and for the purpose of appropriating said land to the use and benefit of the said McCormick and his said co-conspirators.

59 And your orator further charges and alleges the facts to be that the said pretended pre-emptor, Emanuel J. Fisk, and his said pretended witness, Edward Drake, were myths and fictitious persons, and that their names are ficticious names, and that no such persons have ever lived or been known in said Weld County, and that if said affidavits and proof were actually made and sworn to by any one as they purport to have been, that they were so made and sworn to by persons falsely representing themselves to be the said Emanuel J. Fisk and Edward Drake.

(13) And your orator further shows unto your honors that in further pursuance of the fraudulent scheme and combination hereinbefore set out, and to further, and carry out, and effect the same, the said R. R. McCormick and his co-conspirators, having determined to defraud your orator out of certain tracts of public land by falsely and fraudulently pretending that a certain person had fully complied with the law and the rules and regulations of your orator's General Land Office with regard to settlement and improvement upon said land, and in other respects did falsely pretend to comply with the requirements of said law and said rules and regulations by filing a declaratory statement of the intention of the person hereinafter set out, declaring his intention to settle upon and pre-empt the tract of land hereinafter set out, and by giving all notices required by law and said rules and regulations prior to the making of the final entry and proof upon any portion of your orator's public lands under its pre-emption laws.

And some one of said conspirators did furthermore, on or about, to wit, the 31st day of October, 1870, write out, sign, and execute, or cause to be written out, signed, and executed in the name of, or purporting to be in the name of, a person calling himself George D. Miner, a certain application to locate under the pre-emption laws of the United States the SE. ¼, Sec. 14, Tp. 1 N., R. 68 W., in the County of Weld and State of Colorado, the same being one hundred and sixty acres, and which said

60 application furthermore offered for said land the price required by law, which said application, having been made as aforesaid, was by some one of said conspirators filed with the register and receiver of your orator's land office at the city of Denver, Colorado.

And furthermore and at the time last aforesaid, or thereabouts, some one of said conspirators to your orator unknown did write out, sign, and execute, or cause to be written out, signed, and executed in the name of the said person called George D. Miner, a certain paper and affidavit which purported to have been subscribed and sworn to by the said pretended George D. Miner, before C. H. McLaughlin, receiver of your orator's said land office, at Denver, Colorado, and which said paper is dated on the day last aforesaid, and in and by which said paper the said George D. Miner is represented and pretended to have testified to amongst other things, that he had never had the benefit of any right of pre-emption under the provisions of the act of Congress approved September 4th, 1841, and entitled "An act to appropriate the proceeds of the sale of the public land, and to grant pre-emption rights;" that he was not the owner of three hundred and twenty acres of land in any State or Territory of the United States; that he had not settled upon and improved said land on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he had not, directly or indirectly, in any way or manner, made any agreement or contract with any person or persons whatsoever by which the title which he might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself.

And the conspirators aforesaid, or some one or more of them, having filed said application as aforesaid, and having written out said pretended affidavit as aforesaid, did furthermore in the matter of making final entry and proof upon said land in the name of the said pretended George D. Miner, write out, sign, and execute, or cause to be written out, signed, and executed, a certain other paper, deposition, and affidavit, which purported to be the proof of the settlement and pre-emption of said described
61 tract of land by said pretended pre-emption, made and sworn to by one called and pretended to be Edward Drake, and who was pretended to be a witness for said pretended George D. Miner. By which said paper and affidavit it was represented and pretended that the said pretended Edward Drake had testified amongst other things, that he was thirty-seven years of age, a farmer, residing in the county of Weld, and Territory of Colorado; that he had known George D. Miner, the claimant, for about nine months, and knew that on the first day of June, 1870, he was a citizen of the United States; that claimant was a single man over the age of twenty-one years; that at the time of making said affidavit the said George D. Miner was an inhabitant of and settled upon the SE. , Sec. 14, Tp. 1, N., R. 68 W., in the county of Weld and Territory of Colorado; that he first made settlement on said premises on the first day of June, 1870, and had since that time continued to reside thereon, and had erected a one-story frame dwelling-house, fully enclosed, 14 by 16 feet, with one door and two windows, shingled roof and board floor; had plowed and cultivated eight acres or more of said tract of land, and built thereon two hundred rods or more of post and board fence, and had also built thereon a frame stable, dug a well, and had not abandoned a residence on his own land to make said settlement.

And you orator further shows unto your honors that said affidavits and application having been made and written out as aforesaid, the said conspirators, or some one of them, to your orator unknown, did file the

same with the register and receiver of your orator's land office at Denver, Colorado, in pursuance of law and the rules and regulations aforesaid, and at the same time tendered and deposited with the receiver aforesaid in cash, the purchase price for said land as fixed by law.

And said papers having been filed, and said money having been paid as aforesaid, there gister of your orator's land office issued a certificate in duplicate in which it was recited that a person called George D. Miner
62 had, on the day last aforesaid, purchased the said described tract of land, and that on presentation of said certificate to the Commissioner of the General Land Office the said pretended George D. Miner should be entitled to receive a patent for said described tract of land and at the same time, the receiver of your orator's said land office issued a receipt which recited that he had received from the said George D. Miner the sum of four hundred dollars in payment for said described tract of land. And the said register and receiver delivered one of said duplicate certificates and one of said duplicate receipts to the person purporting to represent the said pretended George D. Miner, and thereupon they forwarded said affidavits, application, and other papers, together with one of said duplicate certificates and one of said duplicate receipts to your orator's General Land Office at Washington, for the purpose of having a patent upon said land issued in the name of the said pretended George D. Miner.

And your orator further shows that subsequently the said McCormick, or some one of his co-conspirators, presented and filed, or caused to be presented and filed, the other of said outstanding duplicate certificates and receipts issued and delivered as aforesaid, to your orator's General Land Office and requested the issuance of a patent in the name of the said pretended George D. Miner for said land. And thereupon and, to wit, the 10th day of April, 1871, your orator by and through its duly authorized officers, relying upon the truthfulness of said affidavits, application, proof, certificates, and receipts, made and filed as aforesaid, and trusting and confiding in the acts of said register and receiver, and believing that the said George D. Miner had a good and legal right to pre-empt said land and to receive a patent therefor, and being greatly misled and deceived thereby, did issue its patent for the above-described tract of land in the name of said George D. Miner, which purported to convey said tract, and which said patent was delivered to one of said conspirators, to your orator unknown.

And further complaining showeth your orator unto your honors that all the statements and allegations of said application, affidavits,
63 and proof were totally false, fraudulent, and untrue; that no such person as George D. Miner ever settled upon and improved said tract of land, or ever cultivated the same; that no such person ever resided upon said tract of land at any time prior to the issuance of your orator's patent as aforesaid, nor had any such person attempted to appropriate said land to his own exclusive use and benefit; that no improvements of any kind, whether in the way of building, culitvation, or otherwise had ever been made upon said land at the time aforesaid by any one, but said tract was totally vacant, unoccupied, and uncultivated; and said application, affidavits, and proof were totally false and made for the sole purpose of deceiving your orator and of obtaining its patent aforesaid, and for the purpose of appropriating said land to the use and benefit of the said McCormick and his co-conspirators.

And your orator further charges and alleges the fact to be that the said pretended pre-emptor, George D. Miner, and his said pretended witness, Edward Drake, were myths and ficticious persons, and that their names were ficticious names, and that no such persons have ever lived or been known in said Weld County, and that if said affidavits and proof were actually made and sworn to, as they purport to have been, that they were so made and sworn to by persons falsely representing themselves to be George D. Miner and Edward Drake.

(14) And your orator further shows unto your honors that in further pursuance of the fraudulent scheme and combination hereinbefore set out, and to further and carry out and effect the same, the said R. R. McCormick and his co-conspirators, having determined to defraud your orator out of certain tracts of public land by falsely and fraudulently pretending that a certain person had fully complied with the law, and the rules and regulations of you orator's General Land Office with regard to settlement and improvement upon said lands, and in other respects did falsely
64 pretend to comply with the requirements of said law and said rules and regulations by filing a declaratory statement of the intention of the party hereinafter set out, declaring his intention to settle upon and pre-empt the tract of land hereinafter set out, and by giving all notices required by law, and said rules and regulations, prior to making the final entry and proof upon any portion of your orator's public lands under its pre-emption laws.

And some one of said conspirators did furthermore, on or about, to wit, the 27th day of October, 1870, write out, sign, and execute, or cause to be written out, signed, and executed, in the name of or purporting to be in the name of a person calling himself Mark Moltz, a certain application to locate under the pre-emption laws of the United States, the S. W. ¼ sec. 14, Tp. 1 N., R. 68 W., in the county of Weld and Territory (now State) of Colorado, the same being one hundred and sixty acres, and which said application furthermore offered for said land the price required by law, which said application having been made as aforesaid was by some one of of said conspirators filed with the register and receiver of your orator's land office at the city of Denver, Colorado.

And furthermore and at the time last aforesaid or thereabouts, some one of said conspirators, to your orator unknown, did write out, sign, and execute, or cause to be written out, signed, and executed, in the name of the said person called Mark Moltz, a certain paper and affidavit which purported to have been subscribed and sworn to by the said pretended Mark Moltz before C. H. McLaughlin, receiver of your orator's said land office at Denver, Colorado, and which said paper and affidavit is dated on the day last aforesaid, and in and by which said paper the said Mark Moltz is represented and pretended to have testified amongst other things that he had never had the benefit of any right of pre-emption under the provisions of the act of Congress approved September 4th, 1841, and entitled "An act to appropriate the proceeds of the sale of the public lands and to grant pre-emption rights;" that he was not the owner of three hundred and twenty acres of land in any State or Territory of the United
65 States; that he had not settled upon and improved said land on speculation, but in good faith to appropriate it to his own exclusive use and benefit; that he had not directly or indirectly in any way or man-

ner made any agreement or contract with any person or persons whatsoever by which the title which he might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself.

And the conspirators aforesaid, or some one or more of them, having filed said application aforesaid, and having written out said pretended affidavit as aforesaid, did furthermore, in the matter of making final entry and proof upon said land in the name of the said pretended Mark Moltz, write out, sign, and execute, or cause to be written out, signed, and executed, a certain other paper, deposition, and affidavit, which purported to be proof of the settlement and pre-emption of said described tract of land by said pretended pre-emptor, made and sworn to by one called and pretended to be Sylvanus Drew, and who was pretended to be a witness for said pretended Marx Moltz. By which said paper and affidavit it was represented and pretended that the said pretended Sylvanus Drew had testified, amongst other things, that he was thirty-three years of age, a farmer, residing in the county of Weld, and Territory of Colorado, that he had known Mark Moltz, the claimant, for over one year, and knew that on the first day of June, 1870, he was a citizen of the United States, that said claimant was the head of a family consisting of a wife and one child; that at the time of making said affidavit the claimant was an inhabitant of and settled upon the SW. ¼ sec. 14, tp. 1, N., R. 68 W., in the county of Weld and Territory of Colorado; that such settlement was made on the first day of June, 1870, and that claimant had since that time continued to reside thereon, and had erected a one-story frame dwelling-house, fully enclosed, 16 by 20 feet, with two doors and three windows, shingled roof and board floor, and had plowed over one acre of said tract of land and built thereon about eighty rods or more of post and board fence,
66 and had also built thereon a stable, two corrals, and dug two wells, and had not abandoned a residence on his own land to make said settlement.

And your orator further shows unto your honors that said affidavits and application having been made as aforesaid, the said conspirators, or some one of them to your orator unknown, did file the same with the register and receiver of your orator's said land office at Denver, Colorado, in pursuance of law and the rules and regulations aforesaid, and at the same time tendered and deposited with the receiver aforesaid in cash the purchase price for said land as fixed by law.

And said papers having been filed and said money having been paid as aforesaid, the register of your orator's said land office issued a certificate in duplicate in which it was recited that a person called Mark Moltz had, on the day last aforesaid, purchased the said described tract of land, and that on presentation of said certificate to the Commissioner of the General Land Office the said pretended Mark Moltz should be entitled to receive a patent for said described tract of land, and at the same time the receiver of your orator's said land office issued a receipt which recited that he had received from the *the* said Mark Moltz the sum of four hundred dollars in payment for said described tract of land. And the said register and receiver delivered one of said duplicate certificates and one of said duplicate receipts to the person purporting to represent the said pretended Mark Moltz, and thereupon they forwarded said affidavits, application, and other

papers, together with one of said duplicate certificates and one of said duplicate receipts, to your orator's General Land Office at Washington, for the purpose of having a patent upon said land issued in the name of the said pretended Mark Moltz.

And your orator further shows that subsequently the said McCormick, or some one of his said co-conspirators, presented and filed, or caused to be presented and filed, the other of said outstanding duplicate certificates and receipts issued and delivered as aforesaid, to your orator's General Land Office and requested the issuance of a patent in the name of the
67 said pretended Mark Moltz for said land. And thereupon and on, to wit, the 10th day of April, 1871, by and through its duly authorized officers, your orator, relying upon the truthfulness of said affidavits, application, proof, certificates, and receipts made and filed as aforesaid, and trusting and confiding in the acts of said register and receiver, and believing that the said Mark Moltz had a good and legal right to pre-empt said land and to receive a patent therefor, and being greatly misled and deceived thereby, did issue its patent for the above described tract of land in the name of the said Mark Moltz, which purported to convey said tract, and which said patent was delivered to one of said conspirators, to your orator unknown.

And further complaining showeth your orator unto your honors that all the statements and allegations of said application, affidavits, and proof were totally false, fraudulent, and untrue; that no such person as Mark Moltz ever settled upon and improved said tract of land or cultivated the same; that no such person ever resided on said tract of land at any time prior to the issuance of your orator's patent as aforesaid, nor had any such person attempted to appropriate said land to his own exclusive use and benefit; that no improvements of any kind, whether in the way of building, cultivation, or otherwise, had ever been made upon said land at the time aforesaid by any one, nor had said tract of land ever been cultivated by any one, but said tract was totally vacant, unoccupied, and uncultivated, and said affidavits, application, and proof were totally false, and were made for the sole purpose of deceiving your orator and of obtaining its patent aforesaid, and for the purpose of appropriating said land to the use and benefit of the said McCormick and his said co-conspirators.

And your orator further alleges and charges the fact to be that the said pretended pre-emptor, Mark Moltz, and his said pretended witness, Sylvanus Drew, were myths and ficticious persons, and that their names are ficticious names, and that no such persons have ever lived or been known
68 in said Weld County, and that if said affidavits and proof were actually made and sworn to by any one as they purport to have been, they were so made and sworn to by persons falsely representing themselves to be Mark Moltz and Sylvanus Drew.

And further showeth your orator unto your honors that on or about, to wit, the 28th day of November, 1870, the said Royal Duff, by deed bearing date that day and duly recorded in the county of Weld and State of Colorado on the 14th day of December, 1870, conveyed to David H. Moffat, jr., trustee of the Denver Land Association, the N. E. ¼ sec. 4, tp. 15 N., R. 68 W., in the county and State aforesaid.

That on or about, to wit, the 28th day of November, 1870, by deed bearing date that day and duly recorded in the county of Weld and State

of Colorado on the 14th day of December, 1840, the said Paul Linger conveyed to the said David H. Moffat, jr., trustee as aforesaid, the S. E. ¼ sec. 4, tp. 1 N., R. 68 W., in the county and State aforesaid.

That on or about, to wit, the 28th day of November, 1870, by deed bearing date that day and duly recorded in the county of Weld and State of Colorado on the 14th day of December, 1870, the said Daniel H. Mulchoy conveyed to the said David H. Moffat, jr., trustee as aforesaid, the N. W. ¼ sec. 4, tp. 1 N., R. 68 W., in the county and State aforesaid.

That on or about, to wit, the 31st day of October, 1870, by deed bearing date that day and duly recorded in the county of Weld and State of Colorado on the 14th day of December, 1870, the said Sylvanus Drew conveyed to the said David H. Moffat, jr., trustee as aforesaid, the S. W. ¼ sec. 4, tp. 1 N., R. 68 W., in the county and State aforesaid.

That on or about, to wit, the 31st day of October, 1870, by deed bearing date that day and duly recorded in the county of Weld and State
69 of Colorado on the 14th day of September, 1870, the said Thomas Faver conveyed to the said David H. Moffat, jr., trustee as aforesaid, the N. E. ¼ sec. 8, tp. 1 N., R. 68 W., in the county and State aforesaid.

That on or about, to wit, the 31st day of August, 1870, by deed bearing date that day and duly recorded in the county of Weld and State of Colorado on the 14th day of September, 1870, the said William Roads conveyed to the said David H. Moffat, jr., trustee as aforesaid, the S. E. ¼ sec. 8, tp. 1 N., R. 68 W., in the county and State aforesaid.

That on or about, to wit, the 17th day of October, 1870, by deed bearing date that day and duly recorded in the county of Weld and State of Colorado on the 14th day of December, 1870, the said John Newton sold and conveyed to the said David Moffat, jr., trustee as aforesaid, the N. E. ¼ sec. 10, tp. 1 N., R. 68 W., in the county and State aforesaid.

That on or about, to wit, the 17th day of October, 1870, by deed bearing date that day and duly recorded in the county of Weld and State of Colorado on the 14th day of December, 1870, the said James R. Giddings sold and conveyed to the said David H. Moffat, jr., trustee as aforesaid, the N. W. ¼ sec. 10, tp. 1 N., R. 68 W., in the county and State aforesaid.

That on or about, to wit, the 17th day of October, 1870, by deed bearing date that day and duly recorded in the county of Weld and State of Colorado on the 14th day of December, 1870, the said James Kinsman sold and conveyed to the said David H. Moffat, jr., trustee as aforesaid, the S. E. ¼ sec. 10, tp. 1 N., R. 68 W., in the county and State aforesaid.

That on or about, to wit, the 17th day of October, 1870, by deed bearing date that day and duly recorded in the county of Weld and State of Colorado on the 14th day of December, 1870, the said David Oliver sold and conveyed to the said David H. Moffat, jr., trustee as aforesaid, the S. W. ¼ sec. 10, tp. 1 N., R. 68 W., in the county and State aforesaid.

That on or about, to wit, the 31st day of October, 1870, by deed bearing date on that day and duly recorded in the county of Weld and
70 State of Colorado on the 14th day of December, 1870, the said Edward Drake sold and conveyed to the said David H. Moffat, jr., trustee as aforesaid, the N. E. ¼ sec. 14, tp. 1 N., R. 68 W., in the county and State aforesaid.

That on or about, to wit, the 31st day of October, 1870, by deed bearing date that day and duly recorded in the county of Weld and State of Colorado on the 14th day of December, 1870, the said Emanuel J. Fisk sold and conveyed to the said David H. Moffat, jr., trustee as aforesaid, the NW. ¼ sec. 14, tp. 1 N., R. 68 W., in the county and State aforesaid.

That on or about, to wit, the 31st day of October, 1870, by deed bearing date on that day, and duly recorded in the county of Weld and State of Colorado on the 14th day of December, 1870, the said George D. Miner sold and conveyed to the said David H. Moffat, jr., trustee as aforesaid the SE. ¼ sec. 14, tp. 1 N., R 68 W., in the county and State aforesaid.

That on or about, to wit, the 31st day of October, 1870, by deed bearing date that day, and duly recorded in the county of Weld and State of Colorado, on the 14th day of December, 1870, the said Mark Moltz, sold and conveyed to the said David H. Moffat, jr., trustee as aforesaid the SW. ¼ sec. 14, tp. 1 N., R. 68 W., in the county and State aforesaid.

That on or about, to wit, the 29th day of June, 1872, by deed duly acknowledged that day, and duly recorded in the county of Weld and State of Colorado on the 15th day of July, 1872, the said David H. Moffat, jr., trustee as aforesaid, for the Denver Land Association, sold and conveyed to the Colorado Coal Company the undivided one-half of section 4, the undivided one-half of the east one-half of the undivided one-half of section 10, and the undivided one-half of section 14, all in township 1 N., R. 68, in the county and State aforesaid.

That on or about, to wit, the 28th day of September, 1881, by deed acknowledged that day and duly recorded in the county of Weld and State of Colorado on the 14th day of October, 1881, the said Colorado Coal Company sold and conveyed to Sidney Dillon, trustee, the undivided one-
half of sections 4, 10, and 14, and an undivided one-half of the east
71 half of section 8, all in tp. 1, N. R. 68, in the county and State aforesaid, excepting the NE. ¼ of the NE. ¼ of sec. 14.

That on or about, to wit, the 30th day of September, 1881, by deed acknowledged that day and duly recorded in the county of Weld and State of Colorado on the 14th day of October, 1881, the said Colorado Coal Company sold and conveyed to Sidney Dillon the undivided one-half of the NE. ¼ of the NE. ¼ of sec. 14, tp. 1 N., R. 68, county and State aforesaid.

That on or about, to wit, the 28th day of July, 1871, by deed bearing date that day, and duly recorded in the county of Weld and State of Colorado on the 31st day of July, 1871, the said David H. Moffat, jr., trustee as aforesaid of the Denver Land Association, sold and conveyed to The St. Louis and Denver Land and Mining Company the undivided one-half of sections 4, 10, and 14, and the undivided one-half of the NE. ¼ and the SE. ¼ of sec. 8, all in tp. 1 N., R. 68, in the county and State aforesaid.

That on or about, to wit, the 7th day of February, 1882, by deed bearing date that day and duly recorded in the county of Weld and State of Colorado on the 9th day of March, 1882, the said, The St. Louis and Denver Mining Company sold and conveyed to Sidney Dillon, trustee, the undivided one-half of sections 4, 10, and 14, and the undivided one-half of the east half of sec. 8, all in tp. 1 N., R. 68, in the county and State aforesaid.

That on or about, to wit, the 17th day of October, 1883, by deed bearing date that day, and duly recorded in the county of Weld and State of Colorado on the 26th day of October, 1883, the said Sidney Dillon, trustee, sold and conveyed to the Union Coal *Coal* Company, sections 4, 10, and 14, and the E. ½ of sec. 8, all in tp. 1 N., R. 68, in the county and State aforesaid.

That each and every of the grantees in each and all of said conveyances hereinbefore enumerated, received said deeds with full knowledge of the fraudulent devices by which the Government of the United States had been induced to part with its title to the premises therein mentioned and described, and with full knowledge that the said several named pre-emptors and locators were not entitled to locate, pre-empt, and appropriate said land in the manner hereinbefore set out, and with full knowledge that said locations and pre-emptions were made in violation of the provisions of the acts of Congress, and the rules and regulations of your orator's said General Land Office, and with full knowledge that all of said affidavits and proof hereinbefore set out, were false and fraudulent, and were
72 made and filed as aforesaid for the purpose and with the object of fraudulently procuring your orator's patent for said several tracts of land.

Forasmuch, therefore, as your orator is without remedy in the premises save in a court of equity, and to the end that the said The Union Coal Company, who is made a party defendant to this bill, may be required to make full and direct answer to this bill, may be required to make full and direct answer to the same, but not under oath, the answer under oath being hereby waived, and that each several patent may be set aside and declared void, and delivered up and cancelled, and the several deeds of conveyance from the said supposed pre emptors and the patentees, and all the other deeds of conveyance to the said several pieces and parcels of land as hereinbefore mentioned may be set aside and declared void as against your orator, as clouds upon the title of your orator, and that said deeds may be delivered up to be cancelled, and your orator may have such other and such further relief in the premises as equity may require and to your honors may seem meet.

And may it please your honors that the writ of subpœna in chancery issue, directed to the marshal of the United States for the district of Colorado, commanding him that he summon the said Union Coal Company to appear before this court on a day in said writ to be stated according to law, then and there to answer all and singular the premises, and to stand to and perform and abide such order and decree therein as your honors may make and as may seem agreeable to equity and good conscience, and your orator will ever pray, etc.

(Signed)

A. H. GARLAND,
Attorney-General.
HENRY W. HOBSON,
U. S. Attorney.

J. N. HUGHES,
Asst. United States attorney for the district of Colorado.
THOMPSON & DAVIS,
Of counsel and special assistants.

73 2000. The United States vs. cir. ct. U. S. for Colorado. The Union Coal Company. Bill in chancery. Filed Aug. 26, 1886. (Sgd.) Edward F. Bishop, clerk. The Attorney-General & the district attorney.

And the said subpœna, with the return thereon, is in words and figures as follows, to wit:

Subpœna and return.—The United States of America.

UNITED STATES OF AMERICA,
District of Colorado, ss:

The President of the United States of America to the Union Coal Company, greeting:

You are hereby commanded that you appear before the judges of the circuit court of the United States of America for the district of Colorado, at the city of Denver, in said district, on the first Monday in October next (it being the 4th day of October, A. D. 1886), to answer the bill of complaint of the United States of America, this day filed in the office of the clerk of said court, in said city of Denver, then and there to receive and abide by such judgment and decree as shall then or thereafter be had upon said bill of complaint, upon pain of judgment being pronounced against you by default, and a decree had and entered accordingly.

To the marshal of the district of Colorado to execute and make due return.

Witness, honorable Morrison R. Waite, Chief-Justice of the
74 Supreme Court of the United States of America, and the seal of the said circuit court, at the city of Denver aforesaid, this 26th day of August, in the year of our Lord one thousand eight hundred and eighty-six and of the Independence of the United States the 111th year.

[Seal circt. ct. U. S., Colo.]

(Sgd.) EDWARD F. BISHOP,
Clerk.

By F. W. TUPPER,
Deputy Clerk.

Memorandum.—The above-named defendant is hereby notified that unless it shall enter its appearance in the office of the clerk of said court, at the city of Denver aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against it as confessed, and a decree entered accordingly.

(Sgd.) EDWARD F. BISHOP,
Clerk

By F. W. TUPPER,
Deputy Clerk.

Marshal's return.

UNITED STATES OF AMERICA,
District of Colorado, ss.:

DENVER, *Sept. 14th*, 1886.

No agent of said company found in my district.

This writ, therefore, returned not executed this 14th day of September, A. D. 1886.

(Sgd.) ZEPH T. HILL,
Marshal.
By T. W. BURCHINELL,
Deputy Marshal.

Gen. No. 2000. Circuit court of the United States for the district of Colorado. In chancery. The United States of America vs. The Union Coal Company. Subpœna No. 1. Returnable to rule day, first Monday in October, A. D. 1886. (Sgd.) Edward F. Bishop, clerk. Filed
75 this 14th day of Sept., A. D. 1886, by F. W. Tupper, deputy clerk. H. W. Hobson, of Denver, complt's sol'r.

And afterwards and on, to wit, the 15th day of September, A. D. 1886, came again the said complainant, by its solicitor aforesaid, and filed in said court and in said cause its præcipe for, and sued out of and under the seal of said court a 2d writ of subpœna against the said defendant.

And the said subpœna, with the return of the marshal thereon, is in words and figures, to wit:

Subpœna and return.—The United States of America.

UNITED STATES OF AMERICA,
District of Colorado, ss:

The President of the United States of America to the Union Coal Company, greeting:

You are hereby commanded, as you have heretofore been commanded, that you appear before the judges of the circuit court of the United States of America for the district of Colorado, at the city of Denver, in said district, on the first Monday in November next [it being the 1st day of November, A. D. 1886], to answer the bill of complaint of the United States of America, filed in the office of the clerk of said court, in the city of Denver, then and there to receive and abide by such judgment and decree as shall then or thereafter be had upon said bill of complaint, upon pain of judgment being pronounced against you by default, and a decree had and entered accordingly.

To the marshal of the district of Colorado, to execute and make due return.

Witness, the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, and the seal of the said circuit court, at the city of Denver aforesaid, this 15th day of September, in the year of our Lord one thousand eight hundred and eighty-six and
76 of the Independence of the United States the 111th year.

(Seal circt. ct. U. S., Colo.)

(Sgd.) EDWARD F. BISHOP,
Clerk.
By F. W. TUPPER,
Deputy Clerk.

Memorandum.—The above named defendant is hereby notified that unless it shall enter its appearance in the office of the clerk of said court, at the city of Denver aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be against it as confessed and a decree entered accordingly.

(Sgd.) EDWARD F. BISHOP,
Clerk,
By F. W. TUPPER,
Deputy Clerk.

Marshal's return.

UNITED STATES OF AMERICA,
District of Colorado, ss:

DENVER, *Oct. 2nd*, 1886.

I have duly executed the within writ by delivering to W. H. Brown, authorized agent for the defendant in this State, and each of them personally, a true copy of the within writ, at the place and time as follows, to wit: As to W. H. Brown, on the 30th day of September, A. D. 1886, at the defendant's mines near Como, in Park County.

This writ therefore returned executed as the law directs this 2nd day of October, A. D. 1886.

(Sgd.) ZEPH T. HILL, *Marshal.*

77 Gen. No. 2000. Circuit court of the United States for the district of Colorado. In chancery. The United States of America *vs.* The Union Coal Co. Subpœna. No. 2. Returnable to rule day, first Monday in November, A. D. 1886. Edward F. Bishop, clerk. Filed this 6th day of October, A. D. 1886. (S'g'd) Edward F. Bishop, clerk. By F. W. Tupper, deputy clerk. H. W. Hobson, of Denver, compl't's sol'r.

And afterwards, and on the same day, to wit, the 15th day of September, A. D. 1886, came again the said complainant by its solicitor aforesaid and filed in said court its præcipe for and sued out of and under the seal of said court an alias writ of subpœna against the said defendant.

And the said subpœna, with the return of the marshal thereon, is in the words and figures as follows, to wit:

Subpœna and return.—The United States of America.

UNITED STATES OF AMERICA,
District of Colorado, ss:

The President of the United States of America to The Union Coal Company, greeting:

You are hereby commanded as you have heretofore been commanded, that you appear before the judges of the circuit court of the United States of America for the district of Colorado, at the city of Denver, in said district, on the first Monday in November next [it being the first day of November, A. D. 1886,] to answer the bill of complaint of the United

States of America, filed in the office of the clerk of said court, in said city of Denver, then and there to receive and abide by such judgment and decree as shall then or thereafter be had upon said bill of complaint, upon pain of judgment being pronounced against you by default and a decree had and entered accordingly.

78 To the marshal of the district of Colorado, to execute and make due return.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, and the seal of the said circuit court, at the city of Denver, aforesaid, this 15th day of September, in the year of our Lord one thousand eight hundred and eighty-six and of the independence of the United States the 111th year.

[Seal circ. ct., U. S., Colo.]

(Sgd.) EDWARD F. BISHOP,
Clerk.
F. W. TUPPER,
Deputy Clerk.

Memorandum.—The above named defendant is hereby notified that unless it shall enter its appearance in the office of the clerk of said court, at the city of Denver aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against it as confessed and a decree entered accordingly.

(Sgd.) EDWARD F. BISHOP,
Clerk,
By F. W. TUPPER,
Deputy Clerk.

Marshal's return.

UNITED STATES OF AMERICA,
District of Nebraska, ss:

SEPT. 27TH, 1886.

I have duly executed the within writ by delivering to Dyer O. Clark, as general manager and superintendent of the within named, The Union Coal Company, personally, a true copy of the within writ, at the place and time as follows, to wit: As to Dyer O. Clark, on the 27th day
79 of September, A. D. 1886, at Omaha, in Douglas County, Nebraska. This writ, therefore, returned as the law directs this 27th day of September, A. D. 1886.

(Sgd.) ELLIS L. BIERBOWER
Marshal,
By R. E. ALLEN,
Deputy Marshal.

Gen. No. 2000. Circuit court of the United States for the district of Colorado. In chancery. The United States of America vs. The Union Coal Co. Alias subpœna, returnable to rule day first Monday in November, A. D. 1886. Edward F. Bishop, clerk. Filed this 29th day of Sep-

tember, A. D. 1886. Edward F. Bishop, clerk, by F. W. Tupper, deputy clerk. H. W. Hobson, of Denver, complt's sol'r.

And afterwards, and on the same day, to wit, the 15th day of September, 1886, at chambers before the honorable Moses Hallett, district judge, the following proceeding was had and entered of record in said court and in said cause, to wit:

Order, defendant to appear and plead.

THE UNITED STATES OF AMERICA
vs.
THE UNION COAL COMPANY. } In chancery.

Bill to cancel patents and for other relief.

Henry W. Hobson, attorney for the United States for the district of Colorado, having filed an affidavit in the above named cause, from which it satisfactorily appears that service of process can not be had upon said defendant company according to law in the district of Colorado, and it further appearing from said affidavit that a good and probable cause of action exists in favor of the above named plaintiff against
80 the said defendant, said action being brought to set aside and cancel patents of the United States alleged to have been fraudulently obtained by Royal Duff and others for certain lands in the county of Weld and State of Colorado, and which said lands have been transferred and conveyed to said defendant company, and it further appearing that said defendant company is a necessary and proper party defendant to said suit, and that a subpœna in chancery has been duly issued out of the clerks office of said court, and that it has been returned unserved for the reason that no person can be found in said district upon whom legal service can be made:

Therefore, on motion of Henry W. Hobson, attorney of the United States, it is ordered that said defendant company do appear in this court and plead, answer, or demur to the bill of complaint in said action by the November rule day of said court, and in default of said company's appearing it is notified that the bill in said action against it will be taken as confessed, and that said court will entertain jurisdiction of said action, and will proceed to the hearing and adjudication of said suit in the same manner as if said defendant had been served with process within said district. A copy of this order together with a copy of an alias subpœna shall be served upon any officer of said company at any point outside of the district of Colorado where such officer may be found, and a copy of this order and said alias subpœna shall also be served by the marshal of the United States upon the person in charge of the property of said defendant company, concerning which said suit is brought. But if service as aforesaid can not be had, it is then ordered that a copy of this order shall be published in some newspaper of general circulation nearest to the property in controversy, for six consecutive weeks pursuant to the statute in such case made and provided.

81 And afterwards and on, to wit, the 29th day of September, A. D. 1886, came the marshal of the United States for the district of Nebraska, and filed in said court and in said cause his proof of service

of a certified copy of an order heretofore made in this court. And the said proof of service is in words and figures as follows, to wit:

Proof of service of order to show cause.

Pleas in the circuit court of the United States for the district of Colorado, sitting at Denver.

Be it remembered that heretofore and on, to wit, the 15th day of September, A. D. 1886, at chambers before the honorable Moses Hallett, district judge, the following proceeding was had and entered of record in said court and in a certain cause in said court then pending wherein the United States of America was complainant and The Union Coal Company was defendant, to wit:

THE UNITED STATES OF AMERICA
vs.
THE UNION COAL COMPANY. } 2000. In chancery.

Bill to cancel patents and for other relief.

Henry W. Hobson, attorney of the United States for the district of Colorado, having filed an affidavit in the above-named cause from which it satisfactorily appears that service of process can not be had upon said defendant company according to the law in the district of Colorado, and it further appearing from said affidavit that a good and probable cause of action exists in favor of the above-named plaintiff against the said defendant, said action being brought to set aside and cancel patents of the United States alleged to have been fraudulently obtained by Royal Duff and others for certain lands in the county of Weld and State of Colorado, and which said lands have been transferred and conveyed to said de-
82 fendant company, and it further appearing that the said defendant company is a necessary and proper party defendant to said suit, and that a subpœna in chancery has been duly issued out of the clerk's office of said court, and that it has been returned unserved for the reason that no person can be found in said district upon whom legal service can be made:

Therefore, on motion of Henry W. Hobson, attorney of the United States, it is ordered that said defendant company do appear in this court and plead, answer, or demur to the bill of complaint in said action by the November rule day of said court, and in default of said company's appearing it is notified that the bill in said action against it will be taken as confessed, and that said court will entertain jurisdiction of said action and will proceed to the hearing and adjudication of said suit in the same manner as if said defendant had been served with a process within said district. A copy of this order, together with a copy of an alias subpœna, shall be served upon any officer of said company at any point outside of the District of Colorado where such officer may be found, and a copy of the order and said alias subpœna shall also be served by the marshal of the United States upon the person in charge of the property of said defendant company, conserning which said suit is brought. But if service as aforesaid can not be had, it is then ordered that a copy of this order shall be

published in some newspaper of general circulation nearest to the property in controversy, for six consecutive weeks pursuant to the statute in such case made and provided.

UNITED STATES OF AMERICA,
District of Colorado, ss:

I, Edward F. Bishop, clerk of the circuit court of the United States for the district of Colorado, sitting at Denver, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of
83 a certain order heretofore had and entered of record in said court and in a certain cause now in said court, pending wherein the United States of America is complainant and the Union Coal company is defendant, as fully and completely as the same still remains of record in my office.

In testimony to the above, I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this 16th day of September, A. D. 1886.

[Seal Circt. Ct. U. S., Colo.]

(S'g'd) EDWARD F. BISHOP,
Clerk.
By F. W. TUPPER,
Deputy Clerk.

Proof of service.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 19th day of Sept., 1886, I received this order, and on the 27th day of Sept., 1886, I served the same upon the within named The Union Coal Company, by Dyer O. Clark, general manager and superintendent in Douglas County, State and district of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the endorsements thereon.

(S'g'd) ELLIS L. BIERBOWER,
United States Marshal for the District of Nebraska.
By R. C. ALLEN,
Deputy United States Marshal.

84 2000. Circuit court, U. S. The United States vs. The Union Coal Company. Certified copy order for service and proof of service thereof. No. 1. Filed September 29th, 1886. (Sgd.) Edward F. Bishop, clerk.

And afterwards and on, to wit, the 6th day of October, A. D. 1886, came the marshal of the United States for the district of Colorado, and filed in said court, and in said cause, his proof of service of a certified copy of an order heretofore made in this court, and the said proof of service is in words and figures as follows to wit:

Proof of service of order to show cause.

Pleas in the circuit court of the United States for the district of Colorado, sitting at Denver.

Be it remembered, that heretofore and on, to wit, the 15th day of Sep-

tember, A. D. 1886, at Chambers, before the honorable Moses Hallet, district judge, the following proceeding was had and entered of record in said court and in a certain cause in said court then pending, wherein the United States of America was complainant and the Union Coal Company was defendant, to wit:

THE UNITED STATES OF AMERICA
vs.
THE UNION COAL COMPANY. } 2000. In chancery.

Bill to cancel patents and for other relief.

Henry W. Hobson, attorney of the United States for the district of Colorado, having filed an affidavit in the above named cause from which it satisfactorily appears that service of process can not be had upon said defendant company according to law in the district of Colorado,
85 and it further appearing from said affidavit that a good and probable cause of action exists in favor of the above named plaintiff against the said defendant, said action being brought to set aside and cancel patents of the United States alleged to have been fraudulently obtained by Royal Duff and others, for certain lands in the county of Weld, and State of Colorado, and which said lands have been transferred and conveyed to said defendant company, and it further appearing that said defendant company is a necessary and proper party defendant to said suit, and that a subpœna in chancery has been duly issued out of the clerk's office of said court, and that it has been returned unserved for the reason that no person can be found in said district upon whom legal service can be made:

Therefore, on motion of Henry W. Hobson, attorney of the United States, it is ordered that said defendant company do appear in this court and plead, answer or demur to the bill of complaint in said action by the November rule day of said court, and in default of said company's appearing, it is notified that the bill—said action against it will be taken as confessed, and that said court will entertain jurisdiction of said action, and will proceed to the hearing and adjudication of said suit in the same manner as if said defendant had been served with process within said district. A copy of this order, together with a copy of an alias subpœna, shall be served upon any officer of said company at any point outside of the district of Colorado where such officer may be found, and a copy of this order and said alias subpœna shall also be served by the marshal of the United States upon the person in charge of the property of said defendant company concerning which said suit is brought. But if service as aforesaid can not be had, it is then ordered that a copy of this order shall be published in some newspaper of general circulation nearest to the property in controversy for six consecutive weeks, pursuant to the statute in such case made and provided.

86 UNITED STATES OF AMERICA,
District of Colorado, ss:

I, Edward F. Bishop, clerk of the circuit court of the United States for the district of Colorado, sitting at Denver, do hereby certify the above and foregoing to be a true, perfect and complete transcript and copy of a

certain order heretofore had and entered of record in said court, and in a certain cause now in said court pending wherein the United States of America is complainant and The Union Coal Company is defendant, as fully and completely as the same still remains of record in my office.

In testimony to the above I do hereunto sign my name and affix the seal of said court at Denver, in said District, this 16th day of September, A. D. 1886.

[Seal circ't ct. U. S. Colo.]

(Signed.) EDWARD F. BISHOP,
Clerk.
By F. W. TUPPER,
Deputy Clerk.

Marshal's return.

Notice. U. S. vs. Union Coal Co. No. 2000.

UNITED STATES OF AMERICA,
District of Colorado, ss:

DENVER, COLORADO, *Oct. 2nd*, 1886.

I have duly executed the above writ by delivering to W. H. Brown, the authorized agent for the defendant in this State, a true copy of the within writ on the 30th day of September, 1886, at the defendants
87 mines near Como, in Park County. This writ therefore returned, executed, as the law directs, this 2nd day of October, A. D. 1886.

(Signed.) ZEPH T. HILL,
U. S. Marshal.

2000. Circuit court U. S. The United States vs. The Union Coal Co. Certified copy, order for service and marshal's return. No. 2. Filed Oct. 6th, 1886. (Signed.) Edward F. Bishop, clerk.

And afterwards, and on, to wit, the 14th day of July, A. D. 1887, came again the said defendant by Messrs Teller & Orahood, its solicitors, and filed in said court and in said cause, its answer to the bill of complaint. And the said answer in words and figures, as follows, to wit:

Answer.

In the circuit court of the United States, district of Colorado.

THE UNITED STATES OF AMERICA }
vs.
THE UNION COAL COMPANY. }

88 The answer of the defendants, the Union Coal Company, to the bill of complaint of the United States, complainant.

The defendant now and at all times hereafter reserving unto itself all benefit and advantage of exceptions, which can or may be taken to the many errors, uncertainties and other imperfections in the said complain-

ant's said bill of complaint, contained for answer thereunto or to such part of it as this defendant is advised is material or necessary for it to answer, says:

It admits that on the first day of June, 1870, said complainant was the owner of the said lands in said complaint mentioned and described, but says it has not and can not obtain sufficient information upon which to found a belief whether on said day or at any other time one R. R. McCormick, together with other persons, did with intent to cheat or defraud complainant or with intent illegally or fraudulently to procure patents for said lands or any of them, in violation of any act of Congress, or any laws of the United States, or in violation of any rule or regulation prescribed by the Secretary of the Interior Department, or upon any false or fraudulent pretext whatever, do any act whatever relative to the procuring of said patent, and further answering, denies that at said date or at any other time said McCormick or any other person whatever wrote out, signed, or caused to be signed or executed an application purporting to be in the name of Royal Duff, or whether the said McCormick or any other person than said Duff did make, sign or execute any affidavit or proofs as set forth in said complaint, or whether any of the said statements or proofs furnished by or appearing to be furnished by the said Royal Duff were untrue, whether the same were furnished under the name of Duff or by any other person and whether each or any of the allegations of said complaint and in respect to the action of the said McCormick or any other person relative to the action of the said McCormick, or persons other than those named in the
89 said complaint as the parties who undertook or who represented as undertaking to take up or pre-empt the lands mentioned in said complaint, or whether any or every act alleged to be fraudulent, set forth in said complaint and whether each and every allegation of the said complaint which sets up, alleges or attempts to set up and allege that all or any of the proofs purporting to have been furnished by all or any of the parties purporting to take up or pre-empt lands or to prove up on the same were untrue in any respect, and that too, whether such lands was as alleged in said complaint attempted to be taken up by the use of agricultural scrip, or by any other way or as to whether any of the statements made by any of the parties in said complaint named, were at the time of the making of such statements untrue, and that to as well as to the statements of the parties applying to take up or pre-empt the lands as to the statements of any and all persons purporting to be witnesses in offering the final proofs for the said United States Land Office.

That it has not and can not obtain sufficient information upon which to found a belief as to whether any or all persons in said complaint named, pre-emptors or parties in whose names patent to the lands described did issue, were myths or ficticions persons, or whether the said parties in said complaint mentioned as witnesses or persons furnishing proofs for other were myths or ficticious persons, but avers that if they were such this defendant has at no time had any notice that such was the fact, or is now the fact; that it bought this land in good faith and without any knowledge or notice, actual or constructive, of any conspiracy on the part of R. R. McCormick or any other person, and without any knowledge or notice that required it to investigate or inquire into the validity of the original pre-emption and patents from the plaintiff, and never had any such notice until the commencement of this suit.

This defendant, further answering says that it admits that the title, as set forth in the said complaint, appears to have been made by the original pre-emptors, and that the title has always been of record as therein
90 stated, and that it has passed through the hands of the parties named, after the issuance of the said patents, and that all such deeds were or appeared to have been duly acknowledged, and were all recorded in the proper county immediately after the same were executed or purported to be executed.

It admits that said original pre-emptors, in said complaint mentioned, did convey to said David H. Moffat as in said complaint alleged, and that the title to the same had come in due course of law by deed from said Moffatt and his grantees to this defendant, all of which deeds are now and for many years past have been of record. But this defendant specially denies that the said David H. Moffat or his grantees, or any of them, received said deeds with full knowledge, or with any knowledge whatever, of any fraudulent acts whatever by which the Government of the United States had been induced to part with its title to the premises in said complaint described, or to any part or parcel thereof, and denies that this defendant, or the said Moffat, or any of his grantees ever had any knowledge whatever, or any reason to suppose or believe that said locations and pre-emptions were made in violation of the provisions of the acts of Congress, or any act of Congress, or any law, common or statute, or in violation of any rule or regulation of the General Land Office, or with any knowledge or with any notice, constructive or otherwise, that all or any of the said affidavits or proofs mentioned in said complaint were false or fraudulent in any respect whatever, or that they were made, used, or filed with the object of obtaining title to said lands, or any of them, fraudulently.

But this defendant, on the contrary, avers that if any of the said parties in the said complaint mentioned as pre-emptors, or conspirators in obtaining such title, were guilty of the acts charged in said complaint, no knowledge or suspicion of the fact and no notice of any fact connected therewith which in its nature could cause any suspicion in the minds of this defendant or its remote grantees, ever came to their knowledge or the knowledge of this defendant.

91 This defendant further says that these lands and all of them came into its possession by virtue of a deed from Sidney Dillon, recorded 26th of October, 1883, but made and executed before that date, in which said Dillon was named as trustee of the persons, or some of them, who afterwards and now form a part, if not all of the stockholders of this defendant, and also by virtue of another deed, and that said lands came to the said Dillon by deed from the parties in the said complaint named, without any notice to said Dillon of any defects, irregularities or frauds or fraudulent devices of any kind whatever, and without his having any notice, constructive or otherwise, that the title was subject to attack in any manner or on any account.

This defendant further shows that at the date of the deed to him the said Dillon was a resident of the city of New York and was seldom in this State, and at that time and for about ten years prior to that time the said lands had been worked almost continually by a large number of men

as a coal mine, and large expenditures, to wit, at least $100,000, had been expended thereon without let or hindrance from any one; that on or before the making of such deed to said Dillon, he caused the title to said property to be examined and the records of the recorder's office of the proper county to be examined, as well as the records of the United States Land Office relative to the validity of such title, and for that purpose he employed reputable attorneys in the State and purchased only upon the certificate that the title of record appeared to be good and there was nothing known to such attorneys or to the said Dillon at that time that gave Mr. Dillon cause to fear either that such title was not perfect and complete in every respect, and honestly and fairly got and held by the parties then claiming the title, and that he never had any reason or ground for fear or belief that such title was assailable for any reason until the beginning of this suit.

And this defendant avers that what is true in this respect as to said Dillon is also true as to this defendant, which derived its title from
92 him upon the strength of the examination made by said attorneys, and without any knowledge whatever of any fraud or wrong in any steps by which title passed from the Government, or of any defect whatever in said title.

This defendant further says that it bought this land in good faith, and paid therefor a large amount of money, and has since its purchase continued to work said land and has in order to the proper development thereof expended a large amount of money thereon in opening the same, and in the erection of the necessary machinery to extract coal therefrom and all of which was done before it had any notice of any defects claimed to exist or existing by which its title could be assailed.

This defendant further says that if it is true, as in said complaint alleged *alleged*, that such frauds were practiced on the said plaintiff, the matter was then, and ever since has been, easily established, and must have been known to the officers of the said land office, or if not known it must have been because they took no steps to find out the frauds, and that said plaintiff has been guilty of gross laches in standing by and seeing its property developed, and coal extracted and carried away, and especially in standing by while parties entirely innocent of any knowledge of any fraud whatever, and relying upon the Government act in patenting the land, put in their money, and expend large amounts in improving it and putting it in shape to work, and keeping silent, when it did know, and if it did not know, it ought to have known, it was its place to speak.

This defendant, therefore, calls for strict proofs to all and singular the said allegations in the complaint and also asks that it may be hereon dismissed with its costs.

(Signed) TELLER & ORAHOOD,
Solicitors for Defendant.

93 No. 2000. U. S. C. C., dist. of Colo. The United States of America vs. The Union Coal Company. Answer. Filed July 14, 1887. William A. Willard, clerk. Teller & Orahood, deft's atty's.

And afterwards, and on, to wit, the 20th day of July, A. D. 1887, came again the said complainant by its solicitor aforesaid, and filed in said

court and in said cause its replication to the answer heretofore filed herein. And the said replication is in words and figures as follows, to wit:

Replication.

In the circuit court of the United States, in and for the district of Colorado.

THE UNITED STATES
vs.
THE UNION COAL COMPANY.

The replication of the United States to the answer of Union Coal Company.

This repliant, saving and reserving to itself all and all manner of advantage and exception to the manifold insufficiencies of said answer, for replication thereunto saith, that it will aver and prove its said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true, all of which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill of complaint it hath already prayed.

(Signed) HENRY W. HOBSON,
U. S. Attorney for Colo., and of counsel.

No. 2000. The United States vs. The Union Coal Company. Replication. Filed July 20th, 1887. (Sd.) William A. Willard, clerk, the attorney-general, the district attorney.

94 Be it remembered that heretofore and on, to wit, the 27th day of February, A. D. 1888, there was opened, published, and filed in said court and in a said cause the deposition of Sidney Dillon on behalf of the defendant.

And the said deposition is in words and figures as follows, to wit:

Deposition of Sidney Dillon for defendant.

In the circuit court of the United States for the district of Colorado.

UNITED STATES OF AMERICA,
District of Colorado, ss:

The President of the United States of America, to Charles Nettleton, esq., a notary public, residing at 117 Broadway, New York, in the county of New York, and State of New York, greeting:

Whereas it has been represented that Sidney Dillon is a material witness in a certain cause now pending in the circuit court of the United States for the district of Colorado, wherein the United States of America

is plaintiff and the Union Coal Company is defendant, and that said witness resides at New York aforesaid, without the said district of Colorado, and that his personal attendance cannot be procured at the trial of
95 the said cause:

Now know ye, that in confidence of your prudence and fidelity, you have been appointed and by these presents you are invested with full power and authority as commissioner to examine the said witness, and you are therefore authorized and required to cause said witness to come before you, at such times and place as you may therefor designate and appoint, and diligently to examine the said witness on the oath or affirmation of the said witness by you first duly in that behalf administered, and faithfully take the deposition of said witness upon all interrogatories and cross-interrogatories attached to these presents on the part of the said defendant, and none other; and the same, when thus taken, together with this commission and the said interrogatories, to certify into the said circuit court of the United States, in a sealed envelope, with the least possible delay.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, and the seal of the said court, at the city of Denver, in said district, this 27th day of February, A. D. 1888, and of the independance of the United States the 112nd year.

[Seal circ't ct. U. S., Colo.]

(Signed) WILLIAM A. WILLARD,
Clerk.

By F. W. TUPPER,
Deputy Clerk.

In the circuit court of the United States for the district of Colorado.

THE UNITED STATES OF AMERICA }
vs.
THE UNION COAL COMPANY. }

96 STATE OF NEW YORK,
City and County of New York, ss:

Deposition of Sidney Dillon, of the county of New York and State of New York, a witness of lawful age, produced and sworn and examined upon his corporal oath, on this 2nd day of April, A. D. 1888, at the office of Charles Nettleton, No. 117 Broadway, in the city, county, and State of New York, as aforesaid, by me, Charles Nettleton, a notary public, commissioner duly appointed by a dedimus potestatum, issued out of the clerk's office of the circuit court of the United States for the district of Colorado, bearing teste in the name of the Chief-Justice of the United States, and the seal of said court affixed thereto, and to me directed as such notary public, commissioner for the examination of the said Sidney Dillon as a witness in a certain suit and matter now in controversy, now pending and undetermined in the said circuit court, wherein the United States of America is plaintiff and the Union Coal Company is defendant, in behalf of the said defendant.

Upon the interrogatories of the defendant, being the only ones which were attached to the said commission, and upon no others.

The said SIDNEY DILLON, being first duly sworn by me as a witness in the said cause, previous to the commencement of his examination, to testify the truth, the whole truth, and nothing but the truth, as well on the part of the plaintiff as the defendant, in relation to the matters in controversy between the said plaintiff and defendant, did testify and depose as follows:

1st. Interrogatory first. What is your name, age, occupation, and place of residence?

97 A. Answer. My name is Sidney Dillon; aged 75 years; I am engaged mainly in looking after my own affairs; I reside in New York City.

2nd. Interrogatory second. Do you know the parties plaintiff and defendant in this cause, or either of them; if yes, how long have you known them and each of them, respectively?

A. Answer. I do know the parties as well as any one can know the Government and a corporation.

3rd. Interrogatory third. Did you during the year 1872 and succeeding years know the corporation known as the Colorado Coal Company, organized under the laws of the State of Colorado?

A. Answer. I did know in the year 1872, or subsequently, a corporation known as the Colorado Coal Company, organized under the laws of the State of Colorado.

4th. Interrogatory fourth. What relation, if any, did you bear to said Colorado Coal Company during the year 1872 and succeeding years?

A. Answer. I had business transactions with the said Colorado Coal Company as hereinafter stated.

5th. Interrogatory fifth. Do you remember the fact of purchasing and having deeded to you sections 4, 10, and 14, and the east-half of eight in township one north, range sixty-eight west of the 6th principal meridian, all in Weld County, Colorado, an undivided one-half being deeded by the St. Louis & Denver Land and Mining Company and the other half by the Colorado Coal Company? If you do, state particularly all the facts relating to such purchase, and particularly whether or not this land was purchased separately or with a lot of adjoining and other lands.

98 A. Answer. I do remember the fact of purchasing from the Colorado Coal Company the sections four, ten, and fourteen and the east half of section eight, township one north, range sixty-eight, in Weld County, Colorado. An undivided one-half of the said property was conveyed to me as trustee on or about September 28th, 1881, by the said Colorado Coal Company, and the other undivided half was conveyed to me about February 7th, 1882, by the St. Louis and Denver Land and Mining Company. My recollection is that said land was purchased by me in connection with other and adjoining lands.

Before making the purchase from the Colorado Coal Company I consulted John F. Dillon, my counsel and the counsel of the Union Pacific Railway Company, in regard to the purchase and the title, and caused Messrs. Teller & Orahood, attorneys at Denver, Colorado, to examine the

title, and on the 7th of September, 1881, Messrs. Teller & Orahood wrote to John F. Dillon as follows:

"DENVER, COLORADO, *September 17th*, 1881.

"Hon. JOHN F. DILLON,

"197 *Broadway, New York City:*

"DEAR SIR: Replying to yours of August 16th, regarding the lands and property of the Colorado Coal Company, we will answer according to the subdivisions of your letter.

"We have procured abstracts of title to the land described in the schedule attached to the contract, and from an examination thereof we find the title to the undivided one-half of the same in the Colorado Coal Company and unincumbered of record, excepting levy of attachment by Henry Briggs vs. the Company. We are told unofficially that the suit was dismissed and the whole matter settled soon after the levy was made. Mr. Briggs also informs us that the matter is settled and says he will, at any time, give a written release.

99 "In our opinion the Colorado Coal Company has the capacity in law to hold the property and to convey it with the assent of four-fifths of its stockholders.

"A conveyance to Mr. Sidney Dillon as trustee generally, leaving him to declare the trust in a separate instrument, would in our opinion be the best."

I know and can positively state that both of the purchases and conveyances to me above mentioned, of the said lands described in the fifth interrogatory, were made and received in good faith. I paid full value for the said land. I suppose the deeds to me show correctly the amount I paid.

I had no knowledge or suspicion, and never had heard any intimation, of any fraud or irregularity of any kind in regard to the title to said land or its procurement from the Government. I paid full value for the land and had no notice of any fact impeaching the title of the parties from whom I purchased.

6th interrogatory. If, in answer to the preceeding interrogatory, you say you purchased the said lands and the same were deeded to you, state particularly what knowledge you had in regard to the title to said land?

Answer. I refer to my answer to the fifth interrogatory for my answer to the sixth.

7th interrogatory. If in answer to the preceeding interrogatory, you say that you had the title examined by Teller & Orahood, attorneys at Denver, Colorado, state whether or not they reported to you that the title to said land was good, and whether or not you relied upon their examination, report, and opinion, and whether or not you had any knowledge whatever in regard to the title to said land, or how or when the same was entered, taken up, or purchased from the Government or from any one else.

100 State particularly whether or not you had any knowledge, intimation, or suspicion of there being anything wrong in the original procuring of said lands or in relation to the title thereto. Please state particularly thereto?

Answer. I had the title examined, as above stated, by Teller & Orahood, and they reported, as above stated, that the title to the said land was good. I further state that I relied on their examination, report, and opinion,

and I have no knowledge otherwise in regard to the title to the said land, except what I received from my counsel, Judge Dillon and Messrs. Teller & Orahood, and I made the purchase upon their advise that the title was good. I had no knowledge as to how the lands were entered, taken up, or purchased from the Government, and I state positively that I had no knowledge, intimation, or suspicion that there was anything wrong in the original procuring of the said land from the Government, or in relation to the title thereto. I purchased in full faith that I was acquiring the title I paid for, namely, a free and perfect title.

Lastly:

Do you know, or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause; if yea, set forth the same fully and at large in your answer.

Answer. I think of nothing further in this case, except that subsequently, on or about October 17th, 1883, I believe, I deeded all of said lands, with other property, to the Union Coal Company.

(Signed) SIDNEY DILLON.

Subscribed in my presence and sworn to before me this 2nd day of April, A. D. 1888.

101 [SEAL.] ——— ———,
Notary Public and Commissioner.

STATE OF NEW YORK,
City and County of New York, ss:

I, Charles Nettleton, of the County of New York and State of New York, a notary public & commissioner, duly appointed to take the deposition of the said Sidney Dillon, a witness whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said Sidney Dillon, as a witness in the said suit between the said The United States of America as plaintiff and The Union Coal Company as defendant, he was duly sworn by me to testify the truth in relation to the matters in controversy between the said parties; that the said deposition was taken by me and reduced to writing by E. J. Bunker, a disinterested third person appointed by me for that purpose, a clerk in my office, in my presence and under my direction, at my office, No 117 Broadway, in the City, County, and State of New York, on the 2nd day of April, 1888; and that after said deposition was taken by me as aforesaid, the interrogatories and answers thereto, as written down, were read over to the said witness, and thereupon the same was signed and sworn to by the said deponent, Sidney Dillon, before me at the place and on the day and year last aforesaid.

Witness my hand and notorial seal.

[SEAL.] (Signed) CHARLES NETTLETON,
Notary Public and Commissioner.

102 (Indorsement:) No. 2000. The United States of America vs. The Union Coal Company. Deposition on the part of defendant. Filed Feb. 27th, 1888. William A. Willard, clerk. Opened, published, and filed this 3rd day of May, A. D. 1888.

Examiner's report.

And afterwards and on, to wit, the 5th day of June, A. D. 1888, came Andrew W. Brazee, esq., an examiner in chancery of said court, and filed in said court and in said cause his report of the testimony taken before him as such examiner. And the said report is in words and figures as follows, to wit:

In the circuit court of the United States for the district of Colorado. In equity.

THE UNITED STATES, COMPLAINANT,
vs.
THE UNION COAL COMPANY, DEFENDANT.

To Messrs. TELLER AND ORAHOOD,
Barclay Block, Denver, Colorado,
Solicitors for the above-named defendant:

Take notice that the complainant desire the evidence to be adduced in the above-entitled cause to be taken orally, under the sixty-seventh rule in equity prescribed by the Supreme Court; and by an order of Andrew W. Brazee, esq., one of the examiners of said court, lately made in said cause, it is directed that 10 days notice of the time and place at
103 which the examination of witnesses in said cause will commence be given to the defendant's solicitors. You will further take notice that the examination of witnesses on behalf of the complainant in said cause will commence before the examiner, at his office in the city of Denver, on the 26th day of October, A. D. 1887, at 10 o'clock a. m., and proceed as said examiner may direct.

Dated Denver, this 14th day of October, A. D. 1887.
(Signed:) HENRY W. HOBSON,
Solicitor for U. S. Plfl., per assistant.,

We acknowledge service on us of a copy of the within notice and order, this 14th day of October, A. D. 1887.
(Signed:) TELLER & ORAHOOD,
Solicitors for Union Coal Company, Deft.

In the circuit court of the United States for the district of Colorado. In equity.

THE UNITED STATES, COMPLAINANT,
vs.
THE UNION COAL COMPANY, DEFENDANT.

On application of the complainant, by Henry W. Hobson, solicitor, it appearing that the said complainant desire the evidence to be adduced in said cause to be taken orally, under the sixty-seventh rule of the Supreme Court of the United States and amendments, it is ordered that Wednesday, the 26th day of October, A. D. 1887, at 10 o'clock a. m., at my office,

in the city of Denver, be, and is hereby, fixed as the time and place
104 at which the examination of witnesses in said cause will commence.

Dated at Denver, this 14th day of October, A. D. 1887.

(Signed) ANDREW W. BRAZEE,
Examiner.

UNITED STATES OF AMERICA,
District of Colorado, ss:

Be it remembered, that on the 26th day of October, in the year of our Lord one thousand eight hundred and eighty-seven, in pursuance of the foregoing notices, order and proof of service thereof, prefixed and marked Exhibit "A," the party to the cause therein and herein also mentioned, appeared before me, Andrew W. Brazee, an examiner in chancery, of the circuit court of the United States for the district of Colorado, at my office, 1540 Champa street, Denver, Colorado, to wit: The complainant in said cause, by Henry W. Hobson, U. S. attorney for said district, solicitor, and Edward A. Thompson, of special counsel for the U. S., solicitor, and the defendant by Harper M. Orahood, its solicitor.

And on this day, and on the succeeding days to which the taking of evidence herein was successively adjourned, as hereinafter stated, or on some such days, came before me also Henry Briggs, of the apparent age of sixty years; Joseph Mitchell, of the apparent age of sixty-one years; Sylvester Plumb, of the apparent age of fifty-five years; George F. Key, of the apparent age of Fifty-three years; John C. Bailey, of the apparent age of sixty-six years; Joseph R. Bailey, of the apparent age of
105 thirty-seven years, William Clark, of the apparent age of forty-two years, to testify and the truth to say, as witnesses, on the part and behalf of the complainant in a certain suit or matter of controversy pending and undertermined in the circuit court of the United States for the district of Colorado, at Denver, in said district, wherein the United States of America is complainant and the Union Coal Company is defendant, whereupon the following proceedings were had. And the said witnesses, having first been duly cautioned and sworn according to law, respectively, to testify the truth, the whole truth, and nothing but the truth, in the suit and matter in controversy aforesaid, were severally examined before me on oral interrogatories propounded to them respectively by counsel, as in their several depositions following appears, that is to say:

Stipulation.

It is hereby stipulated that all objections to questions and answers relative to relevancy, competency, and materiality, may be made by either side at the hearing of this case with as full force and effect as though the objections were specially made and noted at the time the questions was asked and the answer given.

It is here stipulated by the parties, through their solicitors here present, that the testimony of the witness in this case as taken down in shorthand writing by Wm. R. Scott may be extended by him and returned by the examiner without the signatures of the witnesses or their oath to the same,

and when the same is so extended it shall have the same force and effect as if the same had been subscribed and sworn to by the witnesses respectively.

(Signed) HENRY W. HOBSON,
U. S. Atty.

106 TELLER & ORAHOOD,
Solicitors, Attorneys for Defendant.

HENRY BRIGGS, a witness produced on the part of the complainant, being first duly sworn, on oath testified as follows, to wit:

Q. State your name, age, place of residence, and occupation.

A. Henry Briggs; age, sixty years; Erie, Weld County, Colorado; ranchman and coal miner.

Q. Are you a good deal of an invalid?

A. Considerable; yes, sir.

Q. How long have you been disabled from doing any active work?

A. Well, I have been working a little this summer; not much. It has been three years since it commenced coming on.

Q. What commenced coming on?

A. Paralysis.

Q. You have had an attack of paralysis?

A. I think it is paralysis; it has kind of come on me.

Q. In your limbs?

A. Yes.

Q. How long have you lived in Colorado?

A. Twenty-seven years.

Q. How long have you lived in Weld County?

A. Twenty years.

Q. What did you first do when you went to Weld County?

A. When I first went there I mined, and then I took charge of a mine.

Q. What kind of a mine?

A. Coal mine.

Q. Please state the circumstances under which you went to Weld County to mine, and what you did after you got there?

A. Well, I got up a company and went and got a bond on some land there, and went east and got up a company—a coal company, and went there to take charge of it.

Q. Where were these lands situated upon which you got the bond and upon which you got up the coal company?

A. It was sections seven, eighteen, and nineteen, in township one north, of range sixty-eight west.

107 Q. What was the name of the company which you got up, and give as near as you can the names of the parties who went into it?

A. We organized under the name of the Colorado Coal Company.

Q. State who the incorporators were, and the names of the men who went into it?

A. E. C. Kattell, Ransom Balcomb, Henry S. Magatt, Erastus Evans (I don't know whether Fred Evans was in it or not), and my myself.

Q. Is that all you can remember?

A. Yes, sir.

Q. Where was this company organized, and how soon after the organization did it go to work upon the lands you have described?

A. We went to work, I think, in 1867.

Q. How long before that had the company been organized?

A. We organized in 1867.

Q. How long after the organization did you start to work?

A. It was in the spring when we organized and we got the place, and that fall, in November, I think it was, I took charge and went to work.

Q. Did you take charge of the property as superintendent?

A. Yes, sir.

Q. From the time you commenced to work up to what time?

A. I also took a kind of lease on it.

Q. From the time you commenced to work up to the time you ceased to be superintendent, did you work the property continuously?

A. Yes, sir.

Q. When did your position as superintendent end, or about when?

A. I forget; it was pretty near 1870, I think; '69 or '70.

Q. On what portion of the land you have described did you sink shafts to work the coal mine?

A. It was on the east half of the west half of *of* section eighteen, I think, right close to the line on the east half of eighteen.

Q. Was it the east half or the west half?

A. The west half of the east half.

Q. Right the reverse of what you stated first?

A. It is the west half of the east half.

108 Q. Where have you lived since your position as superintendent was given up?

A. I have lived at Erie, Denver, Blackhawk, and Central.

Q. How far is Erie from this land you have spoken of?

A. It is right on the original purchase—Erie is.

Q. Was there a man named Wells connected with your company?

A. Yes; didn't I speak of him?

Q. No?

Q. By Mr. Orahood: What Wells was that?

A. John S. Wells.

Q. What was Wells' connection with the company?

A. He was one of the originators; he was one of the men I went first to, back in Binghampton, and got him interested; and come to think of it, there was another man named J. H. Notwier.

Q. What did Mr. Wells have to do with the business management of the company from the time you first started work until you ceased to be superintendent?

A. He had all to do with it. He done all the head-work on the outside.

Q. Did he have general charge and supervision of the business affairs of the company?

A. I had charge there, but he had charge of the whole of it—the head of it.

Q. When did you first hear anything about sections four, eight, ten, and fourteen, in township one, north of range sixty-eight, west, with regard to their being taken up—these are the sections in controversy?

(Defendant objects to the form of the question as leading.)

A. Well, I think it was in 1868.

Q. Who first spoke to you upon the subject, and what was said with reference to those sections?

(Defendant objects to this question because it does not tend to prove any issue in this case, and is hearsay testimony.)

A. J. S. Wells and Ransom Balcomb and Kattell, I think.

Q. Go on?

A. They said they had got that—what we had got, but we wanted to get a good lot of land there; that it would be a big thing. I thought
109 so too. So they went on. They wanted I should go to Denver and see the land agent, Mr. Clements, and Mr. E. C. Holmes. I came in and we talked it over; he said he could work it; he told me what would be his idea, what would be his plan to acquire it.

Q. Who do you mean by the land agents?

A. Well, A. H. Clements, I think; I don't recollect.

Q. Who was Mr. Holmes?

A. He was the other officer in the land office.

Q. Were they the register and receiver in the United States land office at Denver at that time?

A. Yes, sir.

Q. You say that you came to see them about taking up this land; was it about the sections I have mentioned you came to see them about?

A. Yes, sir.

Q. With whom did you talk at the land office?

A. I generally done my talking with Clements?

Q. What did he say to you was his idea about how you should go to work to take up this land?

(To this question defendant objects on the ground that it is hearsay testimony and is inadmissible in addition to the stipulation.)

A. He said they could get names and put them down, and if they would do it and take them up, it would do them more good than the land would—do the United States more good than the land would. He said they were in debt—had had a war and were in debt—and he said he would fix it up, and he told me to get ficticious names and work it through.

Q. When you say he told you to get names, did he intimate whether they were to be actual persons or ficticious names?

A. Ficticious names—names of persons who would not be in the country and nobody would know anything about them.

Q. What did he say about his action and what he would do in the matter?

A. He said he would do it, and then I told him if that was the way, I thought it was not right, and I did not wish to go any further.

Q. From what Clements told you with regard to the manner of
110 taking up these lands did you understand that it was to be a bona fide transaction or a ficticious and fraudulent transaction?

A. Well, when I understood it so far, I did not think it was going to be square, and I told him that I guessed I would not go any further with it, and I diden't.

Q. Did you then go back to Wells and the other men that sent you to fix up the matter and see them about it?

A. Yes; Wells came out—he was out quite frequently, and I told him I didn't want to go any further, and shortly after that I was let out of the superintending of it.

Q. Had Wells ever stated to you, prior to the time you went to the land office as above mentioned, anything about your company being consolidated in business with another company?

A. Yes.

Q. State what he said.

A. Well, about that time they were agitating a railroad to get to the mine, and the Denver & St. Louis Land and Mining Company then went into partnership with our company; they organized and went into partnership with our company.

Q. What was the name of that company?

A. I don't recollect how it was worded, but that was pretty near the name.

Q. Was it not called the Denver & St. Louis Mining Company?

A. Something like that; yes.

Q. Go on.

A. We deeded a one-half interest of that to this company, and then went into partnership.

Q. Had Wells told you of this partnership arrangement he had made prior to the time he wanted you to go and see about this land at the land office, or was it afterwards?

A. It was right then; I don't exactly know whether it was before or after. The transaction was right along; right then.

Q. Who made the arrangement in regard to the partnership between your company and the St. Louis and Denver Land and Mining Company?

A. Wells did, I believe.

Q. Did he tell you all about it at the time?

A. Yes.

111 Q. What was to be the effect of your partnership so far as your working the coal mine?

A. They were to have as much show as we did in the concern—in the company and dividends—they were to have their share in dividends.

Q. Was this to be a consolidated company in which both your company and the other one was to be merged, or a mere partnership between your company and this other company?

A. Well, I believe it was a partnership, although we had deeded a one-half interest to them.

Q. Who deeded?

A. We deeded.

Q. Do you mean to say your company?

A. Yes; the first original company deed to this St. Louis company a half interest.

Q. When this partnership was formed under what name did the two companies as partners work?

A. The Boulder Valley Coal Company.

Q. Were you ever present at a meeting between the representatives of your company and the representatives of the St. Louis and Denver Land and Mining Company?

A. Yes, sir.

Q. Did you know of a man by the name of R. R. McCormick?

A. Yes, sir.

Q. Was he present at that meeting?

A. Yes, sir.

Q. What part did he take in that meeting?

A. Well, he had as much to say as the rest, and Robert E. Carr was there, and he had a good deal to say.

Q. Was McCormick at the meeting as a stockholder or as a party in enterest in your company or the St. Louis and Denver Land and Mining Company?

A. In the St. Louis Company.

Q. What was done at that meeting with regard to a partnership between your company and the other company?

A. Well they were to go in and work in company and have each a proportion of the dividends.

Q. Were the terms of the partnership arranged at that meeting or finally consummated prior to that time?

A. Well, they were talked over there, but I think the arrangement had been made previously.

Q. Did McCormick take a particularly active part in the ar-
112 rangement at that meeting at to the terms settled upon?

A. Yes; he always took an active part.

Q. Was this man, J. S. Wells, the representative of your company, present at that meeting?

A. Yes, if I recollect right he was.

Q. In what year and at what time of the year, as near as you can state, was this meeting held and the terms arranged in regard to the profits between the companies?

A. I think if I mistake not that it was in the summer of 1869.

Q. Had your connections with your company as superintendent ended prior to that time?

A. No.

Q. Was that meeting held subsequently to the time when you say you came to the land office to see about this land, or was it before?

A. Well, it was along about that time—I don't recollect whether before or after—but it was right along.

Q. How long after this meeting was held were you removed from your position as superintendent?

A. Well, I don't think I was out until—I think it was about the first of January, 1870.

Q. Who was put in your place as superintendent of the consolidated companies?

A. Hill.

Q. At the meeting you have referred to as taking place between your company and the St. Louis and Denver Land and Mining Company, was there anything said with regard to these sections four, eight, ten, and fourteen?

A. No, I don't think there was; it was more of the partnership business reading that.

Q. Were the terms of the partnership talked over more?

A. Yes.

Q. Under the terms of the partnership by which the two companies named agreed to work as the Boulder Valley Coal Company what was to be Wells' connection with the consolidated company?

(Defendant objects to the question and answer because the arrangement was in writing and the writing is the best evidence, and this oral
113 testimony is inadmissable in addition to the stipulated objection.)

A. He was to be manager of the eastern part; he was to be the head of the eastern company.

Q. The agent of the eastern company?

A. Yes, sir.

Q. Do you mean by the eastern company your company?

A. Yes; the original company.

Q. From the time of the consolidation of the two companies, state if Wells continued to be actively connected with the property and the management of the affairs of the consolidated company.

A. He did until they sold out.

Q. Did you see him constantly?

A. Not constantly, but once in a while.

Q. What appeared to be his duties and rights in regard to the management of the property up there in Weld County?

A. Well, what he said would be generally carried out; what he suggested was done.

Q. When did you first learn that sections four, eight, ten, and fourteen in township one, north of range sixty-eight west, had been entered for patent?

A. Well, I think it was in 1871 they said it was all right; I think it was in 1871 when I first found out.

Q. Who did you hear of it from, and what did he tell you?

A. He said it was all right.

Q. Who did you hear it from?

A. J. S. Wells.

Q. Did he tell you these particular sections I have mentioned had been entered?

A. Yes. Well, he told me all the land they had talked of was straight, was entered.

Q. Had these particular sections I have mentioned been talked of between you before?

A. Yes, sir.

Q. Did he tell you how he secured the entry and how he made them all right?

A. Any body in the country could see it was not right, but nobody in the country would take exception to it, and t*h*ere was no *no* nobody in the country to appear.

Q. Did he tell you who had entered the land?

114 (Defendant here entered an objection to all this testimony as heresay testimony, both as to questisn and answers in addition to the stipulation.)

A. Yes, sir; he said they were ficticious names.

Q. From 1867 up to the time you had your talk with Wells in 1871 or thereabouts, did you live pretty continuously on section eighteen?

A. Yes, sir.

Q. Does section eighteen corner on section four?
A. The section corners on section eight.
Q. Did you ever hear or know of a man by the name of Royal Duff?
A. I never did.
Q. Living in that section of the country?
A. No, sir.
Q. Was there any one at all living on the northeast quarter of section four, township one, north of range sixty-eight west, from 1867 up to 1871?
A. I never saw any body, and I was riding over the cosntry pretty often.
Q. Did you ever know or hear of a man named Paul Linger?
A. I didn't.
Q. Did any such man ever live in that section of the country during the time I have mentioned, from 1867 to 1871?
A. I never knew him; I never heard his name.
Q. Did any one at all live upon the southeast quarter of section four, township one, north of range sixty-eight west?
A. No, sir; not to my knowledge they did not.
Q. Did you ever hear of or know a man named Mulchoy?
A. No, sir.
Q. Did any such man ever live in that section of the country?
A. I never knew that he did.
Q. Between 1867 and 1871 was there any one living on the northwest quarter of section four in township one, north of range sixty-eight west?
A. I don't think there was.
Q. Did you ever see or hear or know of a man named Sylvester Drew?
A. No.
Q. Did any such man ever live in that section of the country?
115 A. I never knew or heard of him.
Q. From 1867 up to 1871 was there any one at all living upon the southwest quarter of section four, township one, north of range sixty-eight west?
A. I don't think there was.
Q. Did you ever see or know a man named Thomas Faver?
A. No, sir.
Q. To your knowledge, did any such man live in that section of the county of Weld?
A. I didn't know him; I don't think there were.
Q. From 1867 to 1871 to your knowledge did any one ever live on the northeast quarter of section eight, township one, north of range sixty-eight west?
A. No, sir.
—. Did you ever hear or know a man named William Roads?
A. I don't recollect him.
Q. To your knowledge, did such a man live in Weld County in the section of the country where you lived?
A. No, sir.
Q. Between 1867 and 1871, to your knowledge, was any one living on the northeast quarter of section eight, township one, north of range sixty-eight west?
A. No, sir.

Q. Did you ever hear or know of a man named John Newton?

A. No, sir.

Q. During the time I have mentioned, from 1867 up to 1871, was there a man of that name living in Weld County?

A. I don't know that there was.

Q. During that time, so far as your knowledge goes, was any one living upon the northeast quarter of section ten, township one north of range sixty-eight west?

A. No, sir.

Q. Did you ever hear or know of a man named James R. Giddings?

A. No.

Q. During the time I have mentioned did a man of that name, to your knowledge, live in that section of the county of Weld?

A. I do not think so.

Q. And during that time no one lived, so far as you knew, upon the northwest quarter of section ten, township one, north of range sixty-eight west?

A. No, sir.

116 Q. Did you ever hear of or know of a man named Mark Moltz?

A. No, sir.

Q. Did any such man to your ever to your knowledge live in Weld County?

A. Not to my knowledge.

Q. During the time between 1867 and 1871, to your knowledge, did any one live upon the southwest quarter of section fourteen, township one, north of range sixty-eight west?

A. No, sir.

Q. Did you ever see or know of a man named George D. Miner?

A. No.

Q. So far as your knowledge goes did you ever hear of or know of a man by that name living in Weld County?

A. No sir; I did not.

Q. During the time mentioned, between 1867 and 1871, did any one live on the southeast quarter of section fourteen, town one, north of range sixty-eight west?

A. No, sir; not that I knew of.

Q. Did you ever hear or know of a man by the name of Emanuel J. Fisk?

A. No, sir.

Q. To your knowledge did a man by that name ever live at any time in Weld County?

A. No, sir.

Q. To your knowledge did any one ever live between 1867 and 1871 upon the northwest quarter of section fourteen, in town one, north of range sixty-eight west?

A. No sir.

Q. Did you ever hear or know of a man named Edward Drake?

A. No, sir.

Q. To your knowledge did a man of that name ever live at any time in Weld County?

A. Not to my knowledge.

Q. To your knowledge did any one between 1867 and 1871 live upon the northeast quarter of section fourteen, town one, north of range sixty-eight west?

A. No, sir.

Q. Did you ever hear or know of a man named David Oliver?

A. No; I didn't know him.

Q. To your knowledge did a man of that name ever live in Weld County?

117 A. Not to my knowledge.

Q. During the time between 1867 and 1871 did any one live on the southwest quarter of section ten, town. 1 north, of range sixty-eight west?

A. No, sir.

Q. Did you ever hear of or know of a man named James Kinsman?

A. No, sir.

Q. To your own knowledge did a man of that name ever live at any time in Weld County, Colorado?

A. No, sir.

Q. From 1867 to 1871 did any one so far as you know ever live upon the southeast quarter of section ten, town one north, of range sixty-eight west?

A. No, sir.

Q. From 1867 up to 1871 were you well acquainted with the people living in that section of the country?

A. I thought I knew them all and I believe I did.

Q. During that time were you over that section of the country frequently?

A. I was riding over it all the time and around the country.

Q. Could the parties I have mentioned ever lived upon the tracts of land I have set out, to carry on agricultural pursuits, cultivating the land and living there with their families at any time without your knowing it?

A. No, sir; they could not.

Q. Could there have been residences built and anybody occupying the tract of land I have described without your knowing it or seeing them?

A. No, sir; they could not.

Q. Were there ever upon the tracts of land I have mentioned, so far as your observation went, between 1867 and 1871, any residences or buildings at all?

A. No, sir.

Q. During the time I have mentioned was there ever any portion of the tracts of land I have set out broken or cultivated?

A. No.

Q. Did you ever see during that time any parties grazing cattle regularly on those sections?

A. Well, there were cattle all over the country there more or less.

118 There have always been cattle ranging around there ever since I have been there.

Q. Do you know for what purpose these sections four, eight, ten, and fourteen were taken up?

A. For the benefit of the company.

Q. What was to be done with them?

A. They were taken up for coal.

Q. Was it the intention to work them for coal or agricultural land?

(Defendant objects especially to this question on the ground that the witness can not tell what the intention of the parties were.)

A. They were taken up as agricultural lands.

Q. What use were your companies to make of them?

A. Well, we thought there were coal there and they wanted to get as much of the country as they could.

Q. You have stated that a man named R. R. McCormick was present at the meeting between your company and the St. Louis and Denver Land and Mining Company, to your knowledge did this man have anything to do with the management of the affairs of the companies after that?

A. I think he always had. He was one of the managers of the St. Louis part of it—he was one of the directors—directed how things should go.

Q. After the two companies were consolidated into a partnership?

A. Yes, sir.

Q. Was he ever at the properties—the mines?

A. Yes, quite frequently.

Q. Who else was present at the meeting you have spoken of?

A. I know that Robert E. Carr was there, he was president of the K. P. or represented it at that time—I know he was an officer—I think he was president of the K. P. road; I don't know how many others, there was a goodly number out.

Q. Do you know anything about David H. Moffat being at the meeting?

A. Yes, sir.

Q. Was he present at the time of the meeting?

A. I think he was. Yes, sir.

Q. Was he one of the members of the St. Louis and Denver Land and Mining Company?

A. Yes, sir.

119 Q. After this meeting and after the two companies were consolidated and worked under the name of the Boulder Valley Coal Company, did you ever know anything of your own knowledge about David H. Moffat's connection with the consolidated company, and his management of the affairs of it?

A. Well, I will have to think that over; we used to go there and go into the bank and talk there. He was one of the directors, I am quite positive. I always heard him talk, and they always talked about what Moffat thought or suggested.

Q. Did you ever see him up at the mining properties?

A. I don't recollect whether I did or not.

Q. Did you ever see R. R. McCormick there?

A. Yes, sir.

Q. Did you ever have a conversation with R. R. McCormick concerning these particular tracts of land which I have mentioned—sections four, eight, ten, and fourteen?

A. No; I always done my talking with Wells.

Q. How long did the companies, so far as you know, continue to work jointly under the consolidated name of the Boulder Valley Coal Company?

A. Until they sold out about two or three years ago.

Q. Sold out to whom?

A. They sold to Sidney Dillon.

Q. In 1881?

A. Three or four years ago.

Q. Till they sold out to Sidney Dillon?

A. Yes, sir; till they sold out to the Union Pacific Company.

Q. Who was superintendent of the company at the time they sold out to Sidney Dillon?

A. R. W. McDowell, I think is his name.

Q. R. M. McDowell?

A. Well, I think so.

Q. When the property was sold to Sidney Dillon, did McDowell's connection as superintendent cease?

A. He continued to operate for the company, I believe, for a while, anyhow.

Q. Did you ever have any conversation with McDowell while he was superintendent about the entry of these sections?

A. Well, I don't think we ever entered into the details of it minutely.

120 Q. Did you ever have a conversation with him concerning these sections at all?

A. Well, we have laughed and talked about it. He said he knew all about it.

Q. What did he mean when he said he knew all about it?

A. He laughed; he knew how——

(Defendant objects to this testimony on the ground that it is hearsay, in addition to the stipulation.)

A. How they were procured. We talked, and he gave me to understand that he knew all about how they were procured, but the details were not—he said he knew all about it.

Q. In speaking about it and laughing, did he speak as though the details had been proper and the land legally acquired, or as though there was something wrong about it?

A. He knew how they were got; he understood it.

Q. Since 1871 what improvements have been made upon these sections—four, eight, ten, and fourteen?

A. I don't know of any improvement, without it is in the last year or so; I don't think there has been any; I have been so I could not get around much.

Q. Up to the time you were disabled how was it?

A. There had been nothing done.

Q. They were in the same condition as when originally entered?

A. Yes.

Q. Was it a matter of general knowledge and information throughout that section of Weld County how this land had been entered, and for what purpose?

A. Yes; all the people who lived there; they could, they could; if they had any eyes they could see. I never talked with them.

Q. Did you ever see McCormick up there at the property?

A. I saw him at the mines frequently; yes, sir. I don't think he was around over the country much.

121 Q. Did you ever see McCormick prior to the time you had the meeting in Denver you spoke of?

A. I think I had seen him—I think I was acquainted with him before.

Q. Had you seen him up there at the mines?

A. I don't recollect, there were so many at the mines at the time. I don't recollect where I got acquainted with him.

Q. You say there were so many there at the time, who do you mean. Members of the company or outsiders?

A. Outsiders and those also the railroad men—engineers.

Q. Before the meeting I have spoken of, did you ever see any of the parties you knew afterwards as being connected with the St. Louis and Denver Land and Mining Company up there at the mines?

A. Yes, Moffat was up there at the time we were organizing for the railroad—when we were talking about it.

Q. At the time you were organizing for the railroad. Is that the same time you were talking about consolidating with the St. Louis and Denver Land and Mining Company?

A. It was right along there—at the same time—they agreed that they would go in and help them build the railroad and they would do what they could towards helping to make it pay and enlarge the company.

Q. Were the parties in the St. Louis and Denver Land and Mining Company, the same parties who were up seeing the parties about the railroad?

A. Yes, they were the directors to build the road, and were talking with Robert E. Carr about building the road.

On the cross examination of Henry Briggs he testified as follows:

Q. So far as you know these sections four, eight, ten, and fourteen have never been used for anything but agricultural purposes?

A. No; well, there was a shaft sunk on eight—that is the only thing.

Q. When?

A. It must have been in 1871, or about there.

122 Q. Do you know how deep?

A. I think about one hundred and eighty feet—in that neighborhood.

Q. Where is this man, J. S. Wells now?

A. In Binghampton, New York, the last I heard of him.

Q. When did you last hear about him?

A. It was a couple of years ago, I guess.

Q. How about E. C. Katell—where is he?

A. He is dead.

Q. When did he die?

A. Three years ago, I guess.

Q. Where?

A. At Binghampton, New York.

Q. Ranson Balcomb?

A. Dead.

Q. How long ago did he die?

A. Five or six years ago.

Q. Where?

A. At Binghampton.

Q. Henry R. Mascott?

A. Dead.
Q. How long since he died?
A. Well, I don't know; some five or six years.
Q. Where?
A. Norwich, Conne'ticut, or Norwich, New York.
Q. Erastus Evans?
A. Dead.
Q. How long since he died?
A. Three or four years.
Q. Where did he die?
A. In Owego, New York, I think.
Q. J. H. Notwier?
A. Dead.
Q. Where did he die?
A. I don't know.
Q. How long since?
A. It must have been four or five years.
Q. Fredrick Lewis?
A. Well, now, I think he is dead.
Q. Do you know how long since he died?
A. No; I don't.
Q. Wells is about the only one of these men who is left?
A. Yes.
Q. Wells and yourself.
A. Yes, sir.
Q. You spoke of a company being organized as the Colorado Coal Company?
A. Originally, yes.
Q. What kind of an organization was that—under what law?
A. The State of New York.
Q. Do you know for what purpose it was organized?
A. Mining and acquiring land.
123 Q. What kind of mining?
A. Coal and gold and silver—anything.
Q. Do you know whether they filed any papers here or not?
A. I think they did, both in the county and State offices; they said they did; Wells said they did.
Q. As you have given your testimony, you have said he said and they said a great many times in such testimony; you generally refer to Wells?
A. Yes; for he and I——
Q. In fact, from your testimony I infer that nearly all your information came from Wells?
A. Yes; a good deal of it.
Q. This company was organized for the purpose of acquiring land, mines and mining, coal and gold and silver?
A. Yes.
Q. General purposes?
A. Yes, sir; general purposes.
Q. You have spoken of A. H. Clements, and you think he was the register at the land office?
A. Yes, sir.

Q. In Denver?
A. Yes, sir.
Q. Clements is dead, is he not?
A. I believe he is.
Q. Do you know how long since he died?
A. I don't know, seven or eight or ten years; several years.
Q. How about Holmes, the receiver.
A. I don't think he is dead.
Q. Do you know where he is?
A. I don't.
Q. How long since you heard of him or seen him?
A. I have not seen him, it must be about three years; I saw him here on the streets one time.
Q. Do you know his full name?
A. I don't; E. C. Holmes, I think.
Q. You talked about a conversation with the land agents. As I understood you to say to Mr. Hobson you meant with Clements and Holmes?
A. Yes; I done the talking with Clements.
Q. And Clements was the register at the land office?
A. I think he was; no, he was the receiver.
Q. Mr. Hobson—E. R. Clements was the receiver?
124 Q. Do you now refer to D. R. Clements or A. H. Clements, the judge?
A. Judge Clements, A. H.
Q. You have said he was the receiver at the land office?
A. Yes.
Q. He was the man you were talking about and talking with?
A. Yes.
Q. And in your testimony you refer to A. H. Clements, the father of Henry Clements who lives in Denver now?
A. Yes, sir.
Q. He died several years ago?
A. Yes, sir.
Q. The same man after whom Clements' addition in Denver was named?
A. Yes, sir; I think so.
Q. Had been county judge at one time?
A. I don't know; they called him Judge Clements.
Q. You spoke about thinking that this was not going to be square and you would not have anything further to do with it, and soon after you were let out of the superintendence?
A. I was let out when they got to running nicely.
Q. Do you know whether you was let out before or after these lands in sections four, eight, ten, and fourteen were entered at the land office?
A. It was about that time.
Q. Was there not some feeling in regard to your being discharged as superintendent?
A. No, sir.
Q. A little trouble between you and Mr. Wells and the company and they discharged you?
A. No, sir; not any.
Q. Why was it they let you out?

A. Probably they thought a new superintendent would do better than I did.

Q. Were you interested in the company as stockholder?

A. I was.

Q. To what extent, if you remember?

A. Well, I had about one-eighth of the stock of the company.

Q. Were you one of the directors?

A. Yes.

By Mr. HOBSON:

Q. Which company?

A. The Colorado Coal Company.

Q. You owned about one-eighth of the stock of the Colorado Coal Company?

A. Yes, sir.

125 Q. This company, you say, was organized in New York for the purpose of acquiring land and mining for coal and gold and silver?

A. Yes.

Q. Did you own any stock in the other company or companies you have mentioned?

A. I didn't.

Q. Of course you were not a director or officer of that company?

A. No, sir.

Q. How about the Boulder Valley Coal Company; did you own any stock in that company?

A. This was the orignal company.

Q. I am asking you about the Boulder Valley Company; did you own any stock in that company?

A. They did not issue any stock; we had it.

Q. Do you say or pretend to say that it was not incorporated?

A. It was not incorporated; we called the two companies together—the two companies formed that name. The St. Louis company and the Colorado Coal Company went into partnership as the Boulder Valley Coal Company.

Q. You still retained the stock of the original Colorado Coal Company?

A. Yes, sir.

Q. Do you retain it yet?

A. I think so. No, I don't; we sold out; it is in litigation, I think.

Q. You retained the stock and the company sold the property.

A. Yes, sir.

Q. You joined in making the sale?

A. When we came to deed over to this company we had to assign the stock, and I assigned the stock.

Q. The company also made a deed?

A. Yes, sir; they made a deed of the property.

Q. And the St. Louis company made a deed of their property?

A. I believe so.

Q. Up to the time the property was sold, your company and the St. Louis company, as you call it, held the property in common and worked it as co-owners under a partnership?

A. Yes, sir.
Q. And sold it in the same way?
A. Yes, sir; sold it in the same way.
Q. You continued your connection with the company as a stockholder and all that kind of thing up to the time of this sale?
A. Yes.
Q. You knew the circumstances of the sale?
A. Yes, sir.
126 Q. Who was this man Hill who succeeded you as superintendent—what was his name?
A. I forget his given name; there are other parties here who will know his name.
Q. Where did he come from?
A. I think he was one of Moffatt's friends.
Q. Was he a stockholder or officer of the company?
A. No, sir.
Q. Did he come from the east at that time?
A. I don't know.
Q. How long did he continue in the superintendency?
A. I don't know; probably a year.
Q. What do you know about Hill at the present time?
A. I don't know where he is.
Q. When did you hear of him last?
A. Not for years.
Q. Where did you see him last?
A. In Denver.
Q. About how long ago?
A. I don't know.
Q. When did he go out of the office of superintendant of the company, the copartnership?
A. I don't know.
Q. When did he quit.
A. I don't know whether he had charge for a year or a year and a half.
Q. Who succeeded Mr. Hill?
A. I think Jones.
Q. What was his name?
A. J. J. or J. G. Jones.
Q. Who was J. G. Jones?
A. He was the mine superintendant.
Q. How long did he continue there as superintendant?
A. Probably a year or two years.
Q. What became of Jones?
A. I think he is down on Coal Creek—down south on Coal Creek.
Q. In Fremont County at the Cannon City Mines?
A. I think so; some where down there.
Q. What are his initials?
A. J. J. or J. G.
Q. When did you see Jones last?
A. A couple of years ago.
Q. Who succeeded Jones as superintendant?

A. Well, I think I had a lease of it, and it didn't require any superintendant.

Q. For how long did you continue there under the lease?

127 A. Two or three years; no, may be two years; I don't recollect, probably a couple of years.

Q. Did your lease embrace the lands in sections four, eight, ten, and fourteen?

A. I only leased the mine.

Q. Did you have a written lease?

A. Yes, sir.

Q. It just embraced the mines?

A. Embraced the mines.

Q. It did not include sections four, eight, ten, and fourteen?

A. No.

Q. How long did you work the mines under this lease?

A. The first lease, I think, was for a year.

Q. When did it commence?

A. I don't recollect.

Q. About when?

A. It must have been in 1880 or 1881.

Q. You worked a year?

A. I worked a year.

Q. What followed that?

A. I "superceeded" myself; I took another lease.

Q. How long did you work under that lease?

A. I worked a year; and then they were not ready to take it, and I knew I could not lease it for more than three or four months.

Q. Before the sale?

A. Yes, sir.

Q. Did you have charge of it before the sale?

A. No, sir.

Q. Who had charge of it?

A. McDowell.

Q. McDowell was in charge of it for three or four months before the sale was made?

A. He was in charge—I don't know how long.

Q. And he continued in charge after the sale was made?

A. Yes, sir.

Q. How long?

A. I don't know.

Q. Do you know who succeeded McDowell?

A. I think a man by the name of Brown.

Q. What Brown?

A. I don't know his given name.

Q. Where is McDowell now?

A. I was asking somebody about him recently and they thought he was in St. Louis.

Q. You don't know?

A. I don't.

Q. How long since you saw him?

A. I have not seen him for a couple of years.

128 Q. How about Brown—where is he?
A. I heard be was here the other day.
Q. How long since you saw him?
A. Probably a month.
Q. How long did Brown stay in charge of the property?
A. I don't know; he has been around for the Union Pacific in one place and another, up north for the Union Pacific and at Gomo; he was at Erie and then went up north.
Q. Who succeeded Brown?
A. The company broke up—that is, they had taken up everything and abandoned all the working.
Q. Do you know why?
A. The miners would not let them work for the price offered I believe.
Q. They could not afforde to work it?
A. They could not afford to work it and took the machinery away.
Q. There has been no superintendant since?
A. No.
Q. Watchman?
A. No.
Q. The whole thing was abandoned so far as coal mining is concerned?
A. Yes, sir.
Q. The whole thing at the present time is a pasture?
A. Everything is cleaned off.
Q. When was this work stopped, as near as you can tell?
A. It must have been a couple of years ago; I don't recollect. It must have been about two years ago.
Q. You spoke about having conversations with McDowell in which he gave you to understand he knew how these patents were got?
A. Yes, sir.
Q. Do you not remember the particulars of these conversation' which took place?
A. No, sir.
Q. This was after Mr. Dillon had bought the property?
A. It was at the time they were negotiating for it, I believe.
Q. Can you fix the date when it was?
A. No, sir.
Q. You say he was there three months before the sale and afterwards?
A. Yes, sir.
129 A. Yes, sir; he was there longer than that before the sale.
Q. How long before the sale had you known McDowell?
A. When he came to Erie.
Q. When was that; how long before the sale?
A. I don't know; three or six months.
Q. A short time?
A. A short time.
Q. He came from St. Louis?
A. I don't know; I forget where he came from.
Q. How long has it been since you had the stroke of paralysis you spoke of?
A. It has been coming on me between three and four years; since I first felt its effects.

Q. It is sometimes worse than at other times?
A. Yes, sir.
Q. It has very seriously affected your memory, has it not?
A. Well, I don't know; sometimes I can not recollect names very well.
Q. At times it is a good deal worse than at others?
A. Yes, sir; but it is only in my legs.
Q. You say it has affected your memory at times?
A. Well, I don't know whether it has hurt it much or not.
Q. I will ask you if, in addition to this, you have not been through a good deal of mental trouble and excitement during the past three or four years?
A. Yes, I admit that.
Q. Don't you think that has had some effect on your memory?
A. Oh, I don't know.
Q. You are still having some of these troubles, are you not?
A. Oh, not much.
Q. Pretty well through with them?
A. I guess so.

On the redirect examination of Henry Briggs, testified as follows, to wit:

Q. When I first questioned you I was under the impression that the Clements you spoke of was E. R. Clements, the receiver of the Denver land office; as I understand you now the Clements you refer to as
130 the one you went to see was A. H. Clements?
A. I think so.
Q. Did he have any business, such as the entry of land?
A. I think he was receiver. He had something to do in the land office.
Q. The Clements you speak of had something to do with the land office?
A. Yes, sir.
Q. Did he have an office inside the United States land office?
A. Yes, sir.
Q. Was he the man that Wells told you to go to see about the entry of this land?
A. Yes, sir.
Q. Did Wells say anything about having made arrangements with him previously?
A. No, sir; he wanted me to go and see him.

JOSEPH MITCHELL, a witness produced on the part of the complainant, being first duly sworn, on oath testified as follows, to wit:

Q. State your full name, age, residence, and occupation.
A. Joseph Mitchell; age, sixty-one; Erie, Colorado; at present farming.
Q. Where do you live?
A. Erie, Weld County.
Q. How long have you lived there?
A. Since 1870.
Q. What part of the year 1870 did you go there to live?
A. The latter part of December, I think.
Q. What business was you engaged in when you went there?

A. Mining.
Q. Coal mining?
A. Yes, sir.
Q. Where were you working after you went there?
A. In the Boulder Valley coal mine.
Q. On what section of land, if you remember, were the mines in which you worked?
A. Section eighteen.
Q. Township what?
A. Town. one north of range sixty-eight west.
Q. How long did you continue to work there?
A. I suppose something in the neighborhood of a year.
Q. Have you continued to live in that section ever since?
A. Yes, sir.
131 Q. From the time you went there in 1870 up to the present time have you been pretty well acquainted?
A. I have not lived in the town of Erie all the time, but I made that my headquarters. I was off five or six months.
Q. From the time you went there have you been pretty well acquainted with the people in that vicinity?
A. Yes, sir.
Q. Do you know the locations of sections four, eight, ten, and fourteen?
A. Yes, sir.
Q. Do you know anything about these sections as being owned by the company for which you worked?
A. I know they showed a map and claimed that they were taxed for company lands.
Q. Do you remember the time they were entered and proved up; do you know anything about that?
A. No, sir.
Q. What improvements have been made on these lands since 1870, so far as your knowledge goes?
A. Not any that I know of.
Q. Have they been worked for coal?
A. No, sir.
Q. [Paper shown to witness.] I want you to carefully examine this written list of names, containing the names of Royal Duff, Paul Linger, Daniel H. Mulchoy, Sylvanus Drew, Thomas Faver, William Roads, John Newton, James R. Giddings, Mark Moltz, George D. Miner, Emanuel J. Fisk, Edward Drake, David Oliver, and James Kinsman; examine the list, please, carefully, and state whether you knew any such men as those, of any of them.
A. No, sir; I never heard of the names before.
Q. Did you ever hear of the men whose names are on that list, or any of them, living in Weld County?
A. No, sir.
Q. From the time you went to live on section eighteen in 1870, or for several years thereafter, were you over sections four, eight, ten, and fourteen, in township one, pretty often?
A. Yes, sir; I was over them quite frequently.

Q. During that time were there any houses or residences of any kind upon any one of sections four, eight, ten, and fourteen aforesaid?

A. I never saw anything of the kind.

Q. Was there any one at all living on any one of those sections?

A. No.

132 Q. Was there any improvements of any kind upon any one of those sections?

A. There was not the shadow of an improvement that I know of, or any sign of any.

Q. Did you ever see any part of these sections, or any one of them broken and cultivated?

A. No; I never saw any sign of an improvement.

Q. During the year 1870, or the latter part thereof, could there have been parties living upon these sections with their families, and cultivating them, having houses thereon, without your seeing them and knowing of their residence?

A. I don't think there could.

Q. So far as your knowledge goes are the parties whose names are on the list I showed you real or ficticious persons?

A. Well, according to my knowledge, I should think they were ficticious persons.

Q. When did you first know that these sections I have set out were claimed by the company for which you worked, as their coal lands?

A. Very soon after I got into that part of the country; I think the first knowledge I had of it was from Harry Hill, the agent that came after Mr. Briggs.

Q. Did you have a talk with any officer of the company concerning these lands, as to how they were acquired?

A. Yes, I had a talk with Hill; he was the first agent after Mr. Briggs, him and me talked the matter over once or twice, perhaps more, and I talked with McDowell, I believe, on one or two occasions in regard to this land.

Q. What was the conversation between you and Hill in regard to how this land was acquired?

A. That there was a good deal of dirty work in regard to the taking up of this land—that they were taken up fraudulently. He showed me a map of the land, and so on, and agreed to what I heard generally spoke that there was a good deal of fraud in it.

Q. Was it a matter of common knowledge and notoriety in regard to how these lands were taken up?

A. It was generally understood that they were taken up fraudulently—that was the general impression ever since I first went into the place.

133 Q. Did Hill ever tell you in detail how the lands had been taken up fraudulently?

A. No, sir.

Q. You said you had a conversation with McDowell. Who was McDowell?

A. They called him Major McDowell. He was the agent for the company.

Q. Did he have charge of the companie's property?

A. Yes, sir.

Q. Was that prior to the time that Mr. Dillon acquired the property or afterwards?

A. Previous to that a month or two—two or three months.

Q. Did McDowell continue his connection with the company after Mr. Dillon got it?

A. Yes, sir.

Q. Did you ever see Mr. Dillon out there at the property?

A. No, sir; I never saw Dillon—not to know him.

Q. What did McDowell tell you in regard to this land as to how it had been acquired?

A. Well, that they were taken up in a fraudulent way, that they were secured fraudulently. He said he supposed that the coal lands of the Boulder Valley were all fraudulent lands. I told him I thought so too. That was about the way it stood. He seemed to know just as much about the matter as I did. He had got some information in some way in regard to it that the land was supposed to be fraudulent land, not any particular section.

Q. Were you talking about the compan*ie*'s land at that time?

A. Yes; the four thousand five hundred acres; almost the entire lot.

Q. Did McDowell go into particulars in regard to how they had been fraudulently acquired?

A. No.

Q. He merely stated that he supposed all these lands had been fraudulently taken?

A. Yes; he supposed all these lands were fraudulent lands.

Q. In the conversation did he impress you as being very fully advised in regard to the entries?

A. Yes; he seemed to understand about it pretty th*ou*roughly.

Q. With regard to grazing on these lands, have they been used by any particular person for grazing purposes, or is it common ground?

134 A. It is common ground, there is no inclosure whatever; it has been a public th*ou*roughfare; everybod*ie*'s cattle run over it.

On the cross-examination, Joseph Mitchell testified as follows to wit:

Q. When was this conversation you had with McDowell, about what date?

A. I do not remember the date; it was, I think, in the fall of 1880 or 1879, '80 I think.

Q. How long was McDowell there before the property was sold to Mr. Dillon, if you know?

A. Not a great while; six or eight months, I think.

Q. It would be during this time that you had the conversation with him?

A. Yes, sir.

Q. Was not this what he said, there were reports in the community that this land had been fraudulently entered; that he heard reports of that kind?

A. Certainly, he said he heard reports of that kind.

Q. Is not that really what he said, and you said you had heard the same thing?

A. No, he said he supposed all the coal lands they had in the valley were fraudulent lands.

Q. And that was about forty-five hundred acres?
A. About forty-five hundred acres, I think.
Q. You were speaking about the whole tract?
A. Yes, sir; I don't know as any particular part of it was mentioned at all.
Q. This was the only conversation you remember?
A. I had two or three different times talk with him about this matter?
Q. Do you say positively that was before or might have been after the time the property was sold to Mr. Dillon?
A. I am sure it was before.
Q. What fixes it in your mind?
A. One thing that took place afterwards. I came to Denver and went to see McCormick to help him talk up the sale, make the sale, I going to West Denver.
Q. McDowell was engaged in helping to make the sale to Mr. Dillon?
A. He was engaged for Dillon as I understood from these parties.
Q. You say McDowell came down to Denver to make the sale?
135 A. I was going to Denver, and he and me were together, and he asked me to go and talk to McCormick, as perhaps it might have some effect.
Q. He was assisting McCormick to make the sale?
A. Yes, I suppose so. I understood he was buying for the Dillon Company from those other parties, but still he was negotiating for McCormick and the other parties at the same time.
Q. He was cutting both ways on both sides?
A. Yes, I suppose so. I don't know as he was cutting anything, but he was engaged in it.
Q. He was helping to make the sale and helping the other side to buy?
A. Something in that way. I was willing to help him if I could. I wanted to see a change in the country.
Q. You were acting at his suggestion while you were here for the purpose of assisting McCormick and McDowell, they being engaged in making a sale of the property?
A. I had no notion I could do any good; at the same time I was willing to do all I could do and I went along with him.
Q. That was the object?
A. Yes, that was the object.
Q. Do you know how long McDowell stayed there after the sale was made?
A. I think about a year or such a matter.
Q. You say you never saw Mr. Dillon?
A. Not that I recollect. I did not see him to know him.
Q. How long did this mine work or run after it was sold to Mr. Dillon?
A. I think about four or five years.
Q. How long has it been shut down now?
A. I think they shut down a year ago last spring, some time.
Q. Never been worked since?
A. No; never been worked since.
On the redirect examination, Joseph Mitchell testified as follows, to wit:
Q. What did McCormick have to do with the property?

A. McCormick seemed to be the agent. I don't know but
136 he was President, the last time of the company, of this western half of the company.

Q. You mean the company for which you worked in 1870?

A. Yes, sir.

Q. From the time you went there to the time of the sale to Sidney Dillon was McCormick connected with the company and have charge of its affairs?

A. No; I think not.

Q. As president?

A. He didn't as president; he was a stockholder, and, I think, secretary.

Q. Did you see him at the property?

A. Yes, sir.

Q. As early as 1870?

A. No; in 1871 he was there.

Q. Did McDowell represent and state to you that he represented Sidney Dillon in the purchase of this property?

A. That was the first knowledge that I had of that party trying to get it through McDowell.

Q. When you went to see McCormick did McDowell appear to be negotiating with him as the representative of Mr. Dillon?

A. Yes.

Q. Was the property sold to Dillon pursuant to those negotiations?

A. I think it was; that is what I understood from Mc. at the time and after the sale.

On the re-cross-examination Joseph Mitchell testified as follows, to wit:

Q. Do you know anything about the sale except what was told you?

A. No; but I know about it from others besides McDowell. I heard others tell about the sale that were interested in it.

Q. You had no interest in it?

A. No, sir.

Deposition of S. J. PLUMB, a witness called on behalf of the complainant, who being duly sworn according to law, in answer to the interrogatories, testified as follows:

S. J. PLUMB, being first duly sworn, on oath testified as follows, to wit:

Q. State your name, age, residence, and occupation.

A. My name is Sylvester J. Plumb, aged fifty-five; residence is Weld County, two miles north of Erie; farming.

137 Q. How long have you lived in Weld County?

A. I have lived there since August, 1860.

Q. Have you lived at your present place?

A. Yes, sir.

Q. Upon what section?

A. I live on section thirty-one, town two north, range sixty-eight west.

Q. Is that immediately north of township one?

A. Yes, sir; two is in the same range; I live right on the township line between the two townships.

Q. How far do you live from sections four, eight, ten, and fourteen in town one?

A. One mile from eight, and northwest across one would be a little over a mile from four.

Q. Erie is on section eighteen, township one, is it not?

A. Yes.

Q. In going to Erie, does your way lie across any part of sections four, eight, ten, and fourteen?

A. It crosses eight, that is, a small corner of eight.

Q. During the time you have lived in the county at the place you have mentioned, from 1860 up to 1871, were you frequently over the sections I have mentioned?

A. Almost daily.

Q. Were you engaged in the cattle business to any extent?

A. Yes, sir.

Q. Did your cattle run over these sections?

A. Yes, sir.

Q. Were you well acquainted with the people living in that section?

A. Very well; yes, sir.

Q. Up to 1871?

A. Yes, sir.

Q. Been well acquainted with those living there since?

A. Yes, sir.

Q. [Paper shown to witness.] Please examine this written list of names, containing the names of Royal Duff, Paul Linger, Daniel H. Mulchoy, Sylvanus Drew, Thomas Faver, William Roads, John Newton, James R. Giddings, Mark Moltz, George D. Miner, Emanuel J. Fisk, Edward Drake, David Oliver, and James Kinsman, and state if you ever knew or heard of any of these parties?

A. I have no recollection of any such men living there.

Q. Did you ever hear or know of parties by these names or any one of them?

A. No, sir.

138 Q. From 1860 up to 1871 did any such men live in that vicinity or any one of these men whose names are mentioned?

A. Not to my knowledge.

Q. Could these men or any one of them lived on either sections four, eight, ten, or fourteen at any time without your knowing of it and knowing them?

A. No, sir; they could not.

Q. Did you ever hear of any such parties living in Weld County at all or any one of these parties?

A. No, sir.

Q. To the best of your knowledge and acquaintance with the people in that section of Weld County, are the parties whose names are contained in that list real or ficticious?

A. They are ficticious so far as living in that part of the country—they may have been real men in some other part of the country.

Q. From 1860 up to 1871 were there any houses, improvements, buildings, upon sections four, eight, ten, and fourteen?

A. There were no improvements in regard to houses.

Q. Were there any improvements of any kind?

A. Not unless you would call a railroad an improvement, which is built across sections ten and fourteen.

Q. There was no improvement of any kind except a railroad?

A. No, sir.

Q. Within the time I have mentioned from 1860 to 1871 did any one live on any one of these sections either alone or with families?

A. No, sir.

Q. Could parties have lived on these sections without your knowing it?

A. They could not unless they lived there in the night and moved off in the morning. I was almost daily over the places.

Q. Between 1860 and 1871 were there ever any kind of cultivation carried on on these sections?

A. No, sir.

Q. Since 1871 has there been any kind of improvement put upon any of these sections?

A. Not unless you call a legal foundation that was put on last spring an improvement. I think one was put on last spring or last year.

Q. With that exception there has been no improvements?

A. No.

Q. Was there ever any mining done on any one of them?

139 A. Not on these quarters. There was a shaft sunk on eight, but not on these quarters in dispute. The shaft is placed on the southwest quarter. I understand the northwest quarter, the northeast, and the southeast are the ones in dispute. The shaft was sunk on the southwest quarter; there is nothing on the other three quarters.

Q. Do you know about the time when these lands were entered?

A. Well, pretty near; not the exact time.

Q. Do you know anything with regard to the facts connected with their entry?

A. No, sir; my first knowledge of their being entered was when they were brought before the board of county commissioners and asssesed for taxes.

Q. When was that?

A. That was in 1873, if I recollect right.

Q. State if you recollect who claimed the lands then?

A. The Boulder Valley Coal Company, as I understood.

Q. Who was the head of the company?

A. Joseph Bates, of Denver, was acting the head.

Q. Did you know R. R. McCormick?

A. Yes, sir; I saw him.

Q. Did you ever see him up there?

A. No, sir.

Q. Do you know of your own knowledge whether McCormick had any connection with the company?

A. No, sir.

Q. Since these lands have been entered was it a matter of common knowledge and comment in regard to the way they were entered?

A. Yes, sir.

Q. Has it been known pretty generally to all the citizens of that community?

A. Of late years it has; the mass of the people was not aware they were entered for a long time after. I don't know as I would have been

aware of it if it had not been for Bates coming to the board of county commissioners to get the assessment cut down.

Q. Was there any other improvement on the lands except the foundation you spoke of?

A. No, sir.

Q. Is the land enclosed or common range ground?

140 A. It never was enclosed at all.

Cross-examination. None.

Deposition of George F. Keyes.

GEORGE F. KEYES, being first duly sworn, on oath testified as follows, to wit:

Q. State your name, age, place of residence, and occupation.

A. George F. Keyes; fifty-three; Canfield, one mile west of Erie; teaming and farming at present.

Q. How long have you lived in Weld County?

A. I am not living in Weld County at the present time. I lived in Weld County from the fall of 1866 until 1873 and then I went to Boulder County. I live in Boulder County right on the line.

Q. How far did you live from Erie when you lived in Weld County?

A. I lived a part of the time about forty miles and then about eighteen miles, and I was passing through Erie teaming. When I lived in Weld County I was teaming back and forward from the mountains.

Q. Freighting?

A. Yes, sir; hauling hay to the mountains.

Q. In the course of your business did you pass through Erie?

A. Yes.

Q. How often were you on the road in 1869 and 1870?

A. I can not tell; generally I made a trip to the mountains every month, and generally came down back through Erie, hauling poles and posts from the mountains, and I had to go down through Erie.

Q. Where did you live in 1869 and 1870?

A. At Fort Lupton.

Q. How far is that from Erie?

A. About sixteen to eighteen miles.

Q. How frequently did you go to the town of Erie and over that section of the country?

A. I can not tell; I used to haul hay to the mountains and after unloading the hay would get a load of posts and poles and come back; I was making a trip back and forward all the time.

Were you well acquainted with the country around Erie?

A. Tolerably well acquainted.

141 Q. Did you know the people pretty well?

A. I knew most of the people then; I knew them better than I do now.

Q. [Paper shown to witness.] Will you examine this written list of names, containing the names of Royal Duffl, Paul Linger, Daniel Mulchoy, Sylvanus Drew, Thomas Faver, William Roads, John Newton, James R. Giddings, Mark Moltz, George D. Miner, Emanuel J. Fisk, Edward

Drake, David Oliver, and James Kinsman, and state if you knew these parties, or any one of them, or any one bearing the name of any one in the list?

A. Not to my knowledge.

Q. So far as your knowledge goes, did any parties by these names, or any one of them, live in Weld County?

A. Not to my knowledge.

Q. Do you think it would be possible for parties by these names, or any one of them, to have lived around Erie in the year 1869 or 1870, having houses and families and cultivating the land, without your knowing something of them?

A. I think I would have known something of them if they had lived there.

Q. Do you know about where sections four, eight, ten, and fourteen are?

A. Yes.

Q. How long have you known them?

A. I have known them since 1873.

Q. Not before?

A. Well, when traveling over the road I have known the country, but I did not know where the sections were. I did not know the lay of the land till 1873.

Q. How did you come to know them in 1873?

A. I moved up close to Erie, and was traveling around over the country tending stock.

Q. How close to Erie?

A. In 1873 I think I was about two miles from Erie, right west.

Q. Did you then ever hear or know of any parties by the names given in that list, or any one of them?

A. No.

Q. After you moved in 1873, and got to know sections four, eight, ten, and fourteen, were there any residences, houses, buildings, or improvements of any kind on any of them?

A. No, sir; there is not to-day.

142 Q. What fences have there been put up on any of the lands?

A. None that I ever saw.

Q. So far as your knowledge goes, from 1866 up to the present time, has any portion of sections four, eight, ten, or fourteen been cultivated?

A. No, sir; not a foot.

Q. What improvements have been made upon these lands, so far as your knowledge goes, up to the present time?

A. I never saw any improvements on them.

Q. When did you first know this land had been entered for patent?

A. I never knew it positively; only from hearsay; I can not tell; it must have been some time, I think, in 1874–'75.

Cross-examination. None.

The further taking of testimony in this case is adjourned until ten o'clock a. m. Oct. 27th, 1887.

OCT. 27th, 1887.

The parties appeared by their respective solicitors as on yesterday.

Deposition of John C. Bailey.

JOHN C. BAILEY, a witness produced on the part of the complaint, being first duly sworn, on his oath testified as follows, to wit:

Q. State your name, age, residence, and occupation.

A. John C. Bailey; age, sixty-six years last January; Boulder County; farmer; live on township two, section thirty-six.

Q. How long have you lived where you are now living?

A. I moved to the farm I now live on in 1879.

Q. How long have you been living in that vicinity?

A. Since the 11th day of August, 1862.

Q. Where did you live before you moved to your present place?

143 A. I lived on town one, section one, range sixty-nine; the place I live on now is in sixty-nine.

Q. How far is the place you have lived on prior to 1879 from sections four, eight, ten, and fourteen, township one, range sixty-eight west?

A. Well, I took a quarter section in Weld County, in section six, the same township four is in——

Q. Is it not a fact that the county line between Weld and Boulder Counties runs through township one, range sixty-eight west?

A. Between town one—west of town one.

Q. Don't it run through town one?

A. West of town one—right along the west side—the county line—it runs north and south.

Q. How far is the place you lived on up to 1879, in miles, half miles, or quarter miles, from sections four, eight, ten, and fourteen, township one, north of range sixty-eight west?

A. I lived a part of the time on section six. I lived in three different houses during these years. In the first place my house that I lived in in 1862 was on town one, and then I moved across onto town two.

Q. About how far were you from these lands in miles—fifty, one hundred, or what?

A. No; two miles. It is about two miles between the two places—my place of residence and section four.

Q. You lived about two miles from section four?

A. West of section four.

Q. From 1862 up to 1879?

A. Yes, sir.

Q. Were you well acquainted and have you been well acquainted, since 1862, with the people living in that section of country?

A. Yes, I think I have pretty well.

Q. Were you well acquainted with the inhabitants of Erie and the people living round and about Erie?

A. Yes, sir.

Q. Were you over that section of the country often?

A. Very frequently.

Q. Do you know where sections four, eight, ten, and fourteen, township one, north of range sixty-eight west, lie?

A. Yes, sir.

144 Q. How long have you known them—the tracts of land covered by them?

A. Well, I can't say just how long I have known the corners, but I have been over that land there after cattle, herding cattle ever since I have been in the valley more or less all these years—less in the last five years.

Q. Were you living there in 1869 and 1870?

A. Yes, sir.

Q. [Paper shown to witness.] Will you please examine this written list of names I hand you, which contain' the names of Royal Duff, Paul Linger, Daniel H. Mulchoy, Sylvanus Drew, Thomas Faver, William Roads, John Newton, James R. Giddings, Mark Moltz, George D. Miner, Emanuel J. Fisk, Edward Drake, David Oliver, and James Kinsman, and state whether you ever knew or heard of men having such names as those or any of them?

A. I never knew any men of these names in that part of the country.

Q. So far as your knowledge goes, have men with these names of any of them ever lived in Weld County in the section of country where you lived?

A. Not that I knew of.

Q. So far as your knowledge goes, are the parties whose names are in this list here, and so far as they claim to have been residents of Weld County, real or ficticious parties?

A. Ficticious.

Q. Is it even possible, Mr. Bailey, for parties by these names to have lived on any portion of sections four, eight, ten, and fourteen, aforesaid, and to have cultivated any portion of these sections without your knowing of it?

A. I think not, sir; if necessary I could give a good reason——

Q. Did you ever know any one to live on either section four, eight, ten, or fourteen?

A. No, sir.

Q. What improvements, if any, in the way of houses or buildings have been put upon said sections?

A. I never saw any.

Q. What cultivation has been carried on upon any portion of said sections?

A. The railroad runs through, and a shaft has been dug there—

145 nothing, unless you call a railroad an improvement, or the shaft sunk on section eight.

Q. Has there ever been any use made of these lands to your knowledge other than for right of way for the railway and for grazing cattle?

A. No, sir; there has not.

Q. Is it even possible that parties could have lived on these lands, have had houses around there occupied by families, and for the land to have been cultivated without you knowing of it?

A. I think not, I don't think it would be possible; I was over it so often.

Q. Do you know of your own knowledge concerning the entry of these lands for patent, sections four, eight, ten, and fourteen?

A. No; only from hearsay. I heard it was all taken up. I sent in

one. There was an inquiry made to me for land by an acquaintance of mine, and I sent into the land office list twice; once in 1869, 1868 or 1869, to see what I could get on township one, and all the lands were taken up then according to that, and about ten years ago another friend of mine wanted to take up some land and I sent to Mr. Dugall for a plat. There was some land on the south part of ten vacant.

(Defendant objects to incumbering the record.)

Q. What was your occupation from 1862 up to 1873?

A. I was carrying on farming principally all the time.

Q. Did you have cattle?

A. I had cattle; as high as one hundred and forty at one time.

Q. In the matter of the management of the cattle business were you over this section of the country often?

A. Yes, sir.

Cross-examination. None.

Deposition of Joseph R. Bailey.

JOSEPH R. BAILEY, a witness produced on the part of the complainant, being first duly sworn on his oath testified as follows, to wit:

Q. State your name, age, residence, and occupation?

146 A. Joseph R. Bailey; age, thirty-seven; Boulder County, one mile west of the line of Weld County; farming and stock raising.

Q. Are you a son of John C. Bailey?

A. I am.

Q. How long have you lived on the place you have mentioned?

A. I have lived there two years this fall.

Q. How long have you lived in the immediate vicinity?

A. Since 1862 in the fall.

Q. Were you living with your father from 1862 up to 1873?

A. Yes, sir; most of the time.

Q. About how far was that from the town of Erie?

A. It is about three miles the way we used to travel, or three and a half we called it.

Q. In a direct line, how far is it?

A. Two miles and three-quarters.

Q. The town of Erie is on section eighteen, township one, north of range sixty-eight west, is it not?

A. Yes, sir.

Q. Did you at the time you were living with your father attend to his business or were you in business for yourself?

A. I was most of the time.

Q. Were you engaged in the business of cattle?

A. I was herding and riding most of the time.

Q. Were you well acquainted with the people living in that section of the country?

A. Yes; I think I knew most everybody.

Q. Were you over the country frequently, or only occasion'ly?

A. Well, I was over the country from the summer of 1863 up till the fall of 1870, almost daily riding.

Q. Do you know where sections four, eight, ten, and fourteen are?

A. I do.

Q. Were these sections in the country you speak of being over daily almost?

A. Yes, sir; they were.

Q. [Paper shown to witness.] You will please examine this written list of names, containing the names of Royal Duff, Paul Linger, Daniel H. Mulchoy, Sylvanus Drew, Thomas Faver, William Roads, John
147 Newton, James R. Giddings, Mark Moltz, George D. Miner, Emanuel J. Fisk, Edward Drake, David Oliver, and James Kinsman, and state if you ever knew or heard of parties bearing these names or any one of them?

A. I never did.

Q. Did parties bearing such names as these in this list or any one of these names ever live on sections four, eight, ten, or fourteen, township one, north of range sixty-eight west, in the years 1869 or 1870?

A. No, sir.

Q. Would it have been possible for parties to have lived on these sections, or any one of them, without you knowing it?

A. I don't think it would; no, sir.

Q. During the years 1869 and 1870 was there any one living upon any portion of sections four, eight, ten or fourteen in township one, north of range sixty-eight, west?

A. No, sir.

Q. What improvements in the way of buildings, residences or otherwise were there upon any of these sections up to 1875?

A. I never saw any improvements of any kind on any of these sections until the railroad was built; until the grading was done.

Q. When was that?

A. In the fall of 1870; winter of '70–'71. When they built the Boulder Valley Road up the Boulder Valley.

Q. What improvements were put upon the land when the railroad was built?

A. Just the grade, rails, ties, and so on.

Q. Could there have been improvements of any kind upon any of these sections I have named without your knowing of it?

A. No; not up to the fall of 1870 or 1871.

Q. Can you state if any portion of these sections were ever cultivated?

A. They never were.

Q. Did you ever hear or know of parties of the names in this list living in Weld County at all?

A. I did not; no, sir.

Q. So far as parties of these names or any one of them living on the sections I have named and so far as the names go in this list are the persons there named real or ficticioss parties, to the best of your knowledge?

A. They may be real, but I think they are ficticious so far as
148 living in that part of the country is conserned.

Cross-examination. None.

Deposition of William Clark.

WILLIAM CLARK, a witness produced on the part of the complainant, being first duly sworn on his oath, testified as follows, to wit:

Q. State your name, age, place of residence, and occupation?

A. William Clark; age, forty-two; Hillsborough, Weld County, Colorado; farmer.

Q. How long have you lived in Weld County?

A. I have lived in Weld County since the spring of 1865.

Q. From 1865 until 1873, how far were you living from Erie?

A. From '65 till '67, about six miles; from '67 till '81, a little over two miles. I lived with Mr. Plumb.

Q. You say you lived with Mr. Plumb; were you engaged in helping him about his business?

A. Yes, sir; I was engaged in herding horses for Plum' & Tyler.

Q. Were you herding these horses in '69, '70, and '71?

A. Yes, sir.

Q. Do you know where sections four, eight, ten, and fourteen, township one, north of range sixty-eight west are?

A. Yes, sir.

Q. Are they embraced in the section of country you were herding horses over?

A. Yes, sir.

Q. Were you over these sections and through that country very often?

A. Yes, sir; almost daily and occasionally twice a day.

Q. [Paper shown to witness.] Will you please examine this written list of names, containing the names of Royal Duff, Paul Linger, Daniel H. Mulehoy, Sylvanus Drew, Thomas Faver, William Roads, John A. Newton, James R. Giddings, Mark Moltz, George D. Miner, Emanuel J. Fisk, Edward Drake, David Oliver and James Kinsman, and state if you ever knew parties of such names or any one of them?

A. No, sir.

Q. Did you ever hear of parties of such names or any of them?

A. No, sir.

149 Q. Can you state if parties bearing such names in 1869–'70–'71, or any of them lived on any portion of sections four, eight, ten, or fourteen, in township one, north of range sixty-eight west?

A. No, sir; there was no such parties whatever.

Q. Did any one live on these sections or any one of them?

A. Never; not in those years.

Q. Would it have been possible for parties of the names of those on the list to have lived on any one of the sections of land during the years 1869 and 1870 without your knowing of it?

A. No, sir.

Q. What improvements in the way of houses, buildings, and so forth, were there on these lands during 1869, 1870, 1871?

A. No improvements whatever.

Q. Have the lands always remained in their natural state?

A. Yes, sir.

Q. What cultivation has been carried on upon these lands or any portion of them?

A. None at all.

Q. Do you know anything, of your own knowledge, concerning the entry of these lands for patent?

A. No, sir.

Cross-examination. None.

The complainant here offered in evidence papers as follows, the same being hereto annexed:

Exibit "No. 1," being certified copies from the office of the General Land Office of the papers proving the entry of Royal Duff.

Exhibit "No. 2," certified copies of entry proof in application of Paul Linger.

Exhibit "No. 3," being certified copies of entry proof on the application of Daniel H. Mulchoy.

Exhibit "No. 4," being certified copies of entry proof in the application of Thomas H. Faver.

Exhibit "No. 5," being certified copies of proof in application of William Roads.

Exhibit "No. 6," being certified copies of final proof in applica-
150 tion of John Newton.

Exhibit "No. 7," being certified copies in the matter of the application of James R. Giddings.

Exhibit "No. 8," being certified copies of final proof in the matter of the application of Mark Moltz.

Exhibit "No. 9," being certified copies of final entry proof in the matter of the application of George D. Miner.

Exhibit "No. 10," being certified copies of final proof in the matter of the final application of Emanuel J. Fisk.

Exhibit "No. 11," being certified copies of the papers for final proof in the matter of the application of Edward Drake.

Exhibit "No. 12," being certified copies of the papers used as final proof in the matter of the application of David Oliver.

Exhibit "No. 13," being certified copies of the papers used as final proof in the matter of the application of Sylvanus Drew.

To which counsel for defendant objects on the ground that the papers are immaterial, irrelevant, incompetent and in.

(James Kinsman.)

Exhibit "No. 15," being certified copies of papers used as final proof in the matter of the application for patent of Sylvanus Drew.

To which offer defendant objects on the ground that said papers are immaterial, irrelevant, incompetent and inadmissable in this case.

Exhibit "No. 14," complainant here offers in evidence a certified copy of abstract of title to the tracts of land in Weld County, mentioned in exhibits one to thirteen, inclusive, and Exhibit No. fifteen, which abstract is by the examiner marked Exhibit "No. 14" and hereto annexed.

It is hereby stipulated and agreed by and between the parties hereto by their solicitors that the rules and regulations of the General Land
151 Office of the United States, as set out in the bill of complaint in this suit and alleged to be the rules and regulations duly prescribed by the Secretary of the Interior Department of the United States, were the rules and regulations in force at the time the entries set out in this suit

were made. And that the allegations of said bill with regard to the same shall be taken to be true and correct without special proof thereupon.

By agreement of parties, the further taking of testimony in this matter is continued without the time being definitely fixed, and the same may be resumed by either party upon three days' notice being given to the other party.

UNITED STATES OF AMERICA,
District of Colorado, ss:

I, Andrew W. Brazee, duly appointed examiner in chancery by the circuit court of the United States, for the District of Colorado, do hereby certify that on the several days mentioned in the proceedings and depositions annexed, I was attended by the counsel and witnesses aforesaid, at my office, 1540 Champa street, Denver, Colorado.

That said witnesses, to wit: Henry Briggs, Joseph Mitchell, Sylvester J. Plumb, George F. Key, John C. Bailey, Joseph R. Bailey and William Clark, each were first duly sworn by me, according to law as witnesses in the suit or cause in the caption hereto mentioned, and there examined before me orally by counsel and by consent of the parties by their several solicitors, the examination and deposition of said witnesses were severally stenographically written down and afterwards type written. That such examinations were had in the presence of the solicitors of the several parties hereto; that said depositions, after being completed and type written, were not read over by me to them, nor signed nor verified by them after the same were taken, because of the stipulation of said solicitors
152 appearing at the beginning of the proceedings before me, signed by said solicitors respectively, that the same might be returned by me, without the signatures and oaths of the witnesses and have the same force and effect as if the same had been subscribed and sworn to by the witnesses respectively. I further certify that said depositions were taken in shorthand by Wm. R. Scott, and extended by him on a type-writer as the same now appears.

I further certify that the foregoing is a true statement of all proceedings had before me in the matter of taking testimony herein, and the exhibits from one to fifteen inclusive were introduced in evidence in said cause during the taking of said depositions, and subpœnas for witnesses returned befored me are herewith returned and marked "Schedules."

(Signed) ANDREW W. BRAZEE,
Examiner in Chancery.

153 Dis. G., Exhibit 1, A. W. B. B. & G., H. O. B.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., ——— 1886.

I, Wm. A. G. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed copies of papers in the matter of the location made by Royal Duff, at Denver, Colorado, with Agricultural College Scrip No. 1443, R. & R. No. 201, are true and literal exemplifications from the originals on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

[SEAL.] WM. A. J. SPARKS,
(Signed:) *Commissioner of General Land Office.*

[Agricultural College Scrip of July 2, 1862. Agricultural Scrip. Registers and receivers. No. 201, No. 1443. State of Tennessee.]

LAND OFFICE,
Denver, Colorado, Nov. 26th, 1870.

We hereby certify that the attached Scrip, No. 1443, State of Tennessee, was on this day received at this office from Royal Duff, of Weld County, Colorado.

LOUIS DUGAL,
Register.
C. H. MCLAUGHLIN,
Receiver.

I, Royal Duff, of Weld County, Colorado, hereby apply to locate and do locate the northeast quarter of section No. four, in township No. one [1], north of range No. 68 west, in the district of lands subject to sale at the land office at Denver, Colorado, containing 157.70 acres, in satisfaction of the attached Scrip, No. 1443, State of Tennessee, issued under
154 the act of July 2, 1862.

Witness my hand this 26th day of November, A. D. 1870.

ROYAL DUFF.

Attest:

LOUIS DUGAL,
Register.
C. H. MCLAUGHLIN,
Receiver.

I request the pat. to be sent to———

LAND OFFICE,
Denver, Colorado, November 26th, 1870.

We hereby certify that the above location is correct, being in accordance with law and instructions.

LOUIS DUGAL,
Register.
C. H. MCLAUGHLIN,
Receiver.

201. Agl. College Scrip. Denver, Colorado, November 26, 1870. P. A. 1841 Double Mininu D. S. No. 5186, May 28. Aug. 20–170. un-off'd. No. Conflict. Mar. 26, '71. Transmitted June 16th, 1871. Approved for patent this R. & R. Apr. 14, '71. Minor. Excess paid Pr. Cash No. 1586. Excess with No. 199. Rec. Vol. 92, P. 189. Pat. June 5th, 1871. Ex. 2 nw 2.

Land Scrip, No. 1443, for "one quarter section." 201. Genuine M. Colleges for Agricultural and Mechanic Arts. Act of Congress, July 2, 1862. For State of Tennessee.

Whereas in pursuance of the act of Congress approved July 2, 1862, entitled "An act donating public lands to the several States and Terri-

tories which may provide colleges for the benefit of agriculture and the mechanic arts."

The State of Tenessee has accepted the grant provided by the said act, and, under the same, has consequently a legal claim to three hundred thousand acres, not locatable by the State itself, but liable to transfer,
155 and may be located by the assignees of said State, according to assignment, attested by two witnesses, in the form on the back of this instrument; the location by assignees in satisfaction of the claim above mentioned to be made in virtue of a regular series of scrip, a part of which is this: Land Scrip No. 1443, for "one quarter section."

Therefore be it known, That this scrip, when duly assigned and attested by two witnesses under such authority of the said State as the act of the legislature thereof may designate, may be surrendered at any land office of the United States in satisfaction of a location of "one quarter of a section," or for any quantity in one legal sub-division less than one quarter section, where such location is taken in full for "one quarter section" —the location to be restricted to vacant public lands, subject to entry at private sale at $1.25 per acre, mineral lands excluded; and whilst the aggregate location of all the claims under the said act may be taken in any of the territories without limitation as to the quantity located in any one of them, yet, in virtue of express limitation in the statute, "not more than one million acres" of the total aggregate scrip-issue under said act can be located within the limits "of any one of the States."

Given under my hand and seal of the Department of the Interior on the sixteenth day of April, A. D. 1868, and of the Independance of the United States, the ninety-second.

[Department of the Interior.]

W. T. Otto,
Act'g Secretary of the Interior.
Jo. S. Wilson,
Commissioner of the General Land Office.

(Recorded Vol. 164, Page 195.)

156 State of Tennessee,
City of Nashville, June 22nd, 1868.

In virtue of the act of the legislature of the State of Tennessee, approved February 1st, 1868, a copy of which has been filed in the General Land Office, at Washington, D. C.

I, A. J. Fletcher, Secretary of State, for value received, do hereby assign and transfer to Royal Duff, of Weld County, of Colorado, this scrip No. 1453, and authorize the said assignee to locate the same upon the terms and conditions specified in said scrip.

Given under my hand and seal, this twenty-second day of June, 1868.

[The Great Seal of the State of Tennessee Agriculture Comerce.]

A. J. Fletcher,
Sec. of State.

Ateste:
Jesse French.
Frank Hyberger.

[Agricultural college act of July 2, 1862. 201.]

REGISTER'S OFFICE,
Denver, Colorado, November 26th, 1870.

Scrip No. 1443, State of Tennessee, in the name of Royal Duff, has this day been located by Royal Duff upon the northeast quarter of section four [4] in township one [1] north, of range 68 west, subject to any pre-emption claim which may be filed for said land within forty days from this date. Contents of tract located, 157.70. acres.

LOUIS DUGAL,
Register.

(P. A. 1841. Excess paid per cash. No. 1588. Cash. Patent deliveredby R. & R.)

157 [Agricultural College. Act of July 2, 1862. Excess receipt No. 1588.]

RECEIVER'S OFFICE AT DENVER, COLORADO,
November 26, 1870.

Received from Royal Duff, of Weld County, Colorado, the sum of 197 dollars and 12 cents, being in full for 157 acres and 70-hundredths of the northeast quarter of section four (4) in township one (1) north of range 68 west, being excess in said tract over the area located in virtue of Agricultural College Scrip No. 1443, State of Tennessee, R. & R'. No. 201.

$197.12.

C. H. McLAUGHLIN,
Receiver.

(Pre-emption act, 1841, 1588, Denver, Colorado, November 26th, 1870. Excess on A. C. Scrip. No. 201. 2nw 2.)

Affidavit required of pre-emption claimant.

I, Royal Duff, claiming the right of pre-emption under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the sale of public lands and to grant pre-emption rights," approved September 4, 1841, to the northeast quarter of section number four (4) of township number one (1), north of range number 68 west, subject to sale at Denver, Colorado, do solemnly swear that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my own exclusive use or benefit; and that I have not directly or indirectly made any agreement or contract in any way or manner with any person or persons whatsoever, by which the title which I may acquire from the Government of the United States should inure in whole or in part to the benefit of any person except myself.

ROYAL DUFF.

158 I, C. H. McLaughlin, receiver of the land office at Denver, Colorado, do hereby certify that the above affidavit was taken and subscribed to before me this 26th day of November, A. D. 1870.

(Signed) C. H. McLAUGHLIN,
Receiver.

U. S. DISTRICT LAND OFFICE.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

In the matter of proof required of Royal Duff to enter under the pre-emption laws the northeast quarter of section four in township one (1), north of range 68 west, containing 157.70 acres, in the county of Weld and Territory of Colorado, Paul Linger, being duly sworn upon his oath, deposes and says, in answer to interrogatories proposed to him by the receiver of the land office at Denver, Territory of Colorado, as follows, viz:

1. Interrogatory. What is your name, age, occupation, and residence?

Ans. Paul Linger; age, 31 year; a farmer; I reside in the county of Weld and Territory of Colorado.

2. Interrogatory. Are you acquainted with Royal Duff, the claimant; if so, how long have you known him, and do you know that on the 28th day of May, A. D. 1870, he was a citizen of the United States, or that he had filed his declaration of intention to become a citizen?

Ans. I have known Royal Duff, the claimant, for over three years last past, and know that on the 28th day of May, A. D. 1870, he was a native-born citizen of the United States.

3. Interrogatory. Is the aforesaid claimant a single man over the age of twenty-one years, or the head of a family; if the head of a family of what does that family consist?

Ans. He is a single man, over the age of twenty-one years.

159 4. Interrogatory. Do you know that the aforesaid Royal Duff, claimant, is an inhabitant of or settled upon any tract of public land on which he has made a settlement and erected a dwelling-house and made other improvements since the first day of June, A. D. 1840? If so, describe the tract of land, state the time such settlement was made, and if since that time his residence thereon has been continuous, the kind of dwelling-house erected, and what other improvements he has made thereon since the time of settlement, and for what purpose it is used, and has claimant abandoned a residence on his own land in this Territory to make this settlement?

Ans. The claimant, Royal Duff, is now an inhabitant of and settled upon the northeast quarter of section four (4), township one (1), north of range 68 west, in the county of Weld, Territory of Colorado, on the 28th day of May, A. D. 1870, and has since that time continued to reside thereon, and has erected a one-story frame dwelling-house, fully enclosed, size 14 by 16 feet, with one door and 2 windows, with shingled roof and board floor, and has plowed and cultivated three (3) acres or more of said tract of land, and built thereon 150 rods or more of post-and-board fence, and that he uses the land for agricultural and grazing purposes, and as also built a frame stable thereon, and has not abandoned a residence on his own land in this county to make this settlement.

PAUL LINGER.

Sworn and subscribed to before me this twenty-sixth day of November, A. D. 1870.

C. H. MCLAUGHLIN,
Receiver of the Land Office at Denver, C. T.

Dis. "G," Exhibit 2. A. W. B. Bx. 9. H. O. B.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., 1886.

160 I, Wm. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed copies of papers in the matter of the location made by Paul Linger, at Denver, Colorado, with agricultural college scrip No. 1441, R. & R. No. 200, are true and literal exemplifications from the original file in this office.

In testimony whereof, I have hereunto subscribed my name, and 'cause, the seal of the office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] (S'g'd) WM. A. J. SPARKS,
Commissioner of the General Land Office.

Agricultural College Scrip of July 2, 1862. Agricultural scrip. Register and receivers. No. 200. No. 1441, State of Tennessee.

LAND OFFICE,
Denver, Colorado, November 26th, 1870.

We hereby certify that the attached scrip, No. 1441, State Tennessee, was on this day received at this office, from Paul Linger, of Weld County, of Colorado.

LOUIS DUGAL,
Register.
C. H. MCLAUGHLIN,
Receiver.

I, Paul Linger, of Weld County, of Colorado, hereby apply to locate and do locate the southeast ¼ quarter of section No. four [4] in township No. one [1] north, of range No. 68 west, in the district of lands subject to sale at the land office at Denver, Colorado, containing 160 acres, in satisfaction of the attached scrip numbered 1441, State of Tennessee, issued under the act of July 2nd, 1862.

Witness my hand this 26th day of November, A. D. 1870.

(S'g'd) PAUL LINGER.

Attest:

LOUIS DUGAL,
Register.
C. H. MCLAUGHLIN,
Receiver.

I request the patent to be sent to ———.

LAND OFFICE, DENVER, COLORADO,
161 *November 26th*, A. D. 1870.

We hereby certify that the above location is correct, being in accordance with law and instructions.

LOUIS DUGAL,
Register.
C. H. MCLAUGHLIN,
Receiver.

200. Ag. College scrip, Denver, Colorado, November 26, 1870. P. A. 1841, double minimum, D. S. No. 3800, May 30 & Aug. 29-70 unoff'd Mar. 25, 1871, Woods no conflict. Transmitted June 16th, 1871. Excess paid pr. cash No. 1586. Excess with No. 199. Approved p. for pat. 4, Apr. 15th, '71. Minoc. Rec. Vol. 92, p. 188, pat. June 5th, 1871. Ex. 2 nw 2.

[Land scrip No. 1441, for "one quarter section." Genuine M. 200. Colleges for agriculture and mechanics arts. Act of Congress July 2, 1862. For State of Tennessee.]

Whereas, in pursuance of the act of Congress approved July 2, 1862, entitled "An act donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts," the State of Tennessee has accepted the grant provided by the said act, and, under the same, has consequently a legal claim to three hundred thousand acres, not located by the State itself, but liable to transfer and may be located by the assignees of said State according to assignment, attested by two witnesses, in the form on the back of this instrument; the location by assignees in satisfaction of the claim above mentioned, to be made in virtue of a regular series of scrip, a part of which is this: Land Scrip No. 1441 for "one quarter section." Therefore be it known, that this scrip, when duly assigned and attested by two witnesses, under such authority of the said State as the act of legislature thereof may designate, may be surrendered at any land-office of the United States in satisfaction of a location of "one-quarter of a section," or for any quantity in one legal subdivision less than "one quarter section"
162 where such location is taken in full for "one quarter section," the location to be restricted to vacant public lands subject to entry at private sale at $1.25 per acre, mineral lands excluded; and whilst the aggregate location of all the claims under the said act may be taken in any of the Territories without limitation as to the quantity located in any one of them; yet, in virtue of express limitation in the statute "not more than one million acres" of the total aggregate scrip issue under said act can be located within the limits of any one of the States.

Given under my hand and seal of the Department of the Interior on the sixteenth day of April, A. D. 1868, and of the Independence of the United States the ninety-second.

[Department of the Interior.]

(Signed) W. T. Otto,
Acting Sec. of the Interior.

(Recorded vol. 164, page 193.)

Jo. S. Wilson,
Commissioner of the General Land Office.

State of Tennessee,
City of Nashville, June 22nd, 1868.

In virtue of the act of the legislature of the State of Tennessee, approved February 1st, 1868, a copy of which has been filed in the General Land Office at Washington, D. C.

I, A. J. Fletcher, secretary of state, for value received, do hereby assign and transfer to Paul Linger, of Weld County, Territory of Colorado, this

scrip No. 1441, and authorize the said assignee to locate the same upon the terms and conditions specified in said scrip.

Given under my hand and seal this twenty-second day of June, A. D. 1868.

[The great seal of Tennessee. Agriculture, Commerce, 1796.]

(Signed) A. J. FLETCHER,
Sec. State.

Attest:
JESSE FRENCH
FRANK HYBERGER.

163 [Agricultural college act of July 2, 1862.]

REGISTER'S OFFICE,
Denver, Colorado, November 26th, 1870.

Scrip No. 1441, State of Tennessee, in the name of Paul Linger, has this day been located by him upon the southeast quarter of section four (4), in township one (1) north, of range 68 west, subject to any pre-emption claim which may be filed for said land within forty days from this date. Contents of tract located, 160 acres.

(Signed) LOUIS DUGAL,
Register.

(P. A. 1841. Excess paid, pr. cash. No. 1587. 200.)

[Agricultural college act of July 2, 1862. Excess receipt No. 1587.]

RECEIVER'S OFFICE AT DENVER, COLORADO,
November 26th, 1870.

Received from Paul Linger, of Weld County, Colorado, the sum of two hundred dollars and —— cents, being in full for 160 acres and —— hundredths of southeast quarter of section four (4), in township one (1) north, of range 68 west, being excess in said tract over the area located in virtue of agricultural college scrip certificate No. 1441, State of Tennessee. R. & R.'s No. 200. $200.

(Signed) C. H. MCLAUGHLIN,
Receiver.

(Pre-emption act of 1841.)

(1587. Denver, Colorado. November 26th, 1870. Excess on A. C. scrip No. 200.)

Affidavit required of pre-emption claimant.

I, Paul Linger, claiming the right of pre-emption under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the
164 sale of the public lands and to grant pre-emption rights," approved September 4th, 1841, to the southeast quarter of section number four (4), of township one (1) north, of range number 68 west, subject to sale at Denver, Colorado, do solemnly swear that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my own exclu-

sive use or benefit; and that I have not, directly or indirectly, made any agreement or contract with any person or persons whatsoever by which the title which I may acquire from the Government of the United States, should inure, in whole or in part, to the benefit of any person except myself.

(Signed) PAUL LINGER.

I, C. H. McLaughlin, receiver of the land office at Denver, Colorado, do hereby certify that the above affidavit was taken and subscribed before me, this 26th day of November, A. D. 1870.

(Signed) C. H. McLAUGHLIN,
Receiver.

U. S. DISTRICT LAND OFFICE.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

In the matter of proof required of Paul Linger to enter under the pre-emption laws the southeast quarter of section four (4), in township one (1) north, of range 68 west, containing 160 acres, in the county of Weld and Territory of Colorado, Royal Duff, being duly sworn, upon his oath deposes and says, in answer to interrogatories proposed to him by the receiver of the land office at Denver, Territory of Colorado, as follows, viz:

1. Interrogatory. What is your name, age, occupation, and residence?

Ans. Royal Duff, aged 27 years, a farmer; I reside in the county of Weld and Territory of Colorado.

165 2. Interrogatory. Are you acquainted with Paul Linger, the claimant. If so, how long have you known him and do you know that on the 30th day of May, A. D. 1870, he was a citizen of the United States, or that he had filed his declaration of intention to become a citizen?

Ans. I have known Paul Linger, the claimant, for three years last past, and know that on the 30th day of May, A. D. 1870, he was a citizen of the United States.

3. Interrogatory. Is the aforesaid claimant a single man; over the age of 21 years; or the head of a family; if the head of a family of what does that family consist?

Ans. He is a single man over the age of 21 years.

4. Interrogatory. Do you know that the aforesaid Paul Linger, claimant, is an inhabitant of, or settled upon any tract of public land on which he has made a settlement and erected a dwelling-house and made other improvements since the first day of June, A. D. 1840? If so describe the tract of land, state the time such settlement was made and that if since that time his residence thereon has been continuous, the kind of dwelling-house erected, and what other improvements he has made thereon since the time of settlement, and for what purpose it is used, and has claimant abandoned a residence on his own land in this Territory to make this settlement?

Ans. The claimant, Paul Linger is now an inhabitant of and settled upon the southeast ¼ of section four (4), township one (1) north, of range 68 west, in the county of Weld, Territory of Colorado, on the 30th day of May, A. D. 1870, and has since that time continued to reside thereon, and erected a one-story frame dwelling-house, fully enclosed, size 14 by 16 feet, with one door and 2 windows, with shingled roof, board floor, and has plowed and cultivated three (3) acres or more of said tract of land, and built thereon 200 rods or more of post-and-board fence,

and that he uses the land for agricultural and grazing purposes. He has also built a board corral and dug a well on said tract, and has not abandoned a residence on his own land in this Territory to make this settlement.

(Signed) ROYAL DUFF.

166 Sworn and subscribed to before me this twenty-sixth day of November, A. D. 1870.

(Signed) C. H. MCLAUGHLIN,
Receiver of the Land Office at Denver, C. T.

Dis. "G," Exhibit 3, A. W. B. B. F. G. H. O. B.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., 1886.

I, Wm. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed copies of papers in the matter of the location made by Daniel H. Mulchoy, at Denver, Colorado, with agricultural college scrip No. 1439, R. & R. No. 199, are true and literal exemplifications from the originals on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year last above written.

[Seal Gen'l Land Office, U. S.]

(Signed) WM. A. J. SPARKS,
Commissioner of General Land Office.

[Agricultural college scrip of July 2, 1862. Agricultural scrip. Register and Receivers. No. 199. No. 1439. State of Tennessee.]

LAND OFFICE,
Denver, Colorado, November 26th, 1870.

We hereby certify that the attached scrip No. 1439, State of Ten-
167 nessee, was on this day received at this office, from Daniel H. Mulchoy, of Weld County, of Colorado.

(Signed) LOUIS DUGAL,
Register.
C. H. MCLAUGHLIN,
Receiver.

I, Daniel H. Mulchoy, of Weld County, of Colorado, hereby apply to locate and do locate the northwest quarter of section four (4), in township one (1), north of range 68 west, in the district of lands subject to sale at the land office at Denver, Colorado, containing 158.16 acres, in satisfaction of the attached scrip No. 1439, State of Tennessee, issued under the act of July 2, 1862.

Witness my hand this 26th day of November, A. D. 1870.

(Signed) DANIEL H. MULCHOY.

Attest:

LOUIS DUGAL,
Register.
C. H. MCLAUGHLIN,
Receiver.

I request the patent to be sent to ———.

LAND OFFICE,
Denver, Colorado, November 26th, 1870.

We hereby certify that the above location is correct; being in accordance with law and instructions.

(Signed) C. H. MCLAUGHLIN,
Receiver.
LOUIS DUGAL,
Register.

199. Ag. college scrip, Denver, Colorado, November 26, 1870. Pa. 1841. Double minimum, D. S. No. 5193. May 27 & Aug. 29, '70, unoff'd, Mar. 25, 1871, Woods. No conflict. Excess paid for cash No. 1586. Excess for 199, 200, & 201–4. Approved for plat April 15, '71, Minor rec., vol. 92, p. 187; pat. June 5, 1871. Ex. 2, $\frac{NW.}{2}$.

[Land scrip No. 1439, for "one quarter section," 199 genuine M. College for Agriculture and Mechanic Arts. Act of Congress July 2, 1862, for the State of Tennessee.]

Whereas, in pursuance of the act of Congress approved July 2, 1862, entitled "An act donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts."

The State of Tennessee has accepted the grant provided by said act, and, under the same, has consequentally a legal claim to three hundred thousand acres, not locatable by the State itself, but liable to trans
168 fer, and may be located by the assignees of said State, according to a'signment attested by two witnesses in the form on the back of this instrument, the locations by assignees in satisfaction of the claim above mentioned to be made in virtue of a regular series of scrip, a part of which is this: Land scrip No. 1439, for "one quarter section."

Therefore be it known, that the scrip, when duly assigned and attested by two witnesses, under such authority of the said State as the act of the legislature thereof may designate, may be surrendered at any land office of the United States in satisfaction of a location of "one quarter of a section," or for any quantity in one legal subdivision less than "one quarter section" where such location is taken in full for "one quarter section"—the location to be restricted to vacant public lands subject to entry at private sale at $1.25 per acre, mineral lands excluded, and whilst the aggregate location of all the claims under the said act may be taken in any of the Territories without limitation as to the quantity located in any one of them, yet, in virtue of express limitation in the statute, "not more than one million acres" of the total aggregate scrip issue under said act can be located within the limits "of any one of the States."

Given under my hand and seal of the Department of the Interior on the sixteenth day of April, A. D. 1868, and of the Independance of the United States———

[Department of the Interior seal.]

(Signed) W. T. OTTO,
Act'g Secretary of the Interior.

JO. S. WILSON,
Commissioner of the General Land Office.

(Recorded vol. 164, page 191.)

169 STATE OF TENNESSEE,
City of Nashville, June 22nd, 1868.

In virtue of the act of the legislature of the State of Tennessee, approved February 1st, 1868, a copy of which has been filed in the General Land Office at Washington, D. C.

I, A. J. Fletcher, secretary of state, for value received, do hereby assign and transfer to Daniel H. Mulchoy, of Weld County, Territory of Colorado, this scrip No. 1439, and authorize the said assignee to locate the same upon the terms and conditions specified in said scrip.

Given under my hand and seal this twenty-second day of June, 1868.

(Signed) A. J. FLETCHER,
Secretary of State.

{ The great seal of Tennessee. }
{ Agriculture, Commerce, 1796. }

Attest:
JESSE FRENCH,
FRANK HYBERGER.

[Agricultural college act of July 2, 1862.]

REGISTER'S OFFICE,
November 26th, 1870.

Denver, Colorado, scrip No. 1439, State of Tennessee, in the name of Daniel H. Mulchoy, upon the northwest quarter of section four (4), in township one (1) north, of range 68 west, subject to any pre-emption claims which may be filed for said land within forty days from this date. Contents of tract located, 158.16 acres.

(Signed) LOUIS DUGAL,
Register.

(Pat. delivered by R. R. Pre-emption act 1841. Excess paid pr. cash. No. 1586. 199.)

170 [Agricultural college, act of July 2, 1862. Excess receipt, 1586.]

RECEIVER'S OFFICE AT DENVER, COLORADO,
November 26th, 1870.

Received from Daniel H. Mulchoy, of Weld County, Colorado, the sum of 197 dollars and 70 cents, being in full for 158 acres and 16 hundredths of the northwest quarter of section No. four (4), in township No. one, (1) north, of range 68 west, being excess in said tract over the area located in virtue of agricultural college scrip, certificate No. 1439, State of Tennessee, R. & R's. No. 199, $199.70.

(Signed) C. H. MCLAUGHLIN,
Receiver.

(1586–21580. Denver, Colorado, November 26th, 1870. Excess on A. C. 8. 199, 200, & 201. See abstract.)

Affidavit required of pre-emption claimant.

I, Daniel H. Mulchoy, claiming the right of pre-emption under the provisions of the act of Congress entitled "An act to appropriate the pro-

ceeds of the sale of the public lands, and to grant pre-emption rights," approved September 4th, 1841, to the northwest quarter of section No. four (4) of township No. one (1) north, of range No. 68 west, subject to sale at Denver, Colorado, do solemnly swear that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor have I settled upon and improved the same on speculation, but in good faith, to appropriate it to my own exclusive use or benefit, and that I have not directly or indirectly made any agreement or contract in any way or manner with any person or persons whatsoever, by which the title I may acquire from the Government of the United States should inure in whole or in part to the benefit of any person except myself.

(Signed) DANIEL H. MULCHOY.

I, C. H. McLaughlin, receiver of the land office at Denver,
171 Colorado, do hereby certify that the above affidavit was taken and subscribed to before me this 26th day of November, A. D. 1870.

(Signed) C. H. MCLAUGHLIN,
Receiver.

U. S. DISTRICT LAND OFFICE.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

In the matter of proof required of Daniel H. Mulchoy, to enter under the pre-emption laws the northwest ¼ of section four (4), in township one (1) north, of range 68 west, containing 158 and .16 acres, in the county of Weld and Territory of Colorado, Paul Linger being duly sworn upon his oath, deposes and says, in answer to interrogatories proposed to him by the receiver of the land office at Denver, Territory of Colorado, as follows, viz:

1. Interrogatory. What is your name, age, occupation, and residence?

Ans. Paul Linger; age, 31 years; a farmer; I reside in the county of Weld and Territory of Colorado.

2. Interrogatory. Are you acquainted with Daniel H. Mulchoy, the claimant? If so, how long have you known him, and do you know that on the 27th day of May, A. D. 1870, he was a citizen of the United States or that he had filed his declaration of intention to become a citizen?

Ans. I have known Daniel H. Mulchoy, the claimant, for sixteen months last past, and know that on the 27th day of May, A. D. 1870, he was a native born citizen of the United States.

3. Interrogatory. Is the aforesaid claimant a single man over the age of twenty-one years, or the head of a family? If the head of a family, of what does that family consist?

Ans. He is a single man over the age of twenty-one years.

172 4. Interrogatory. Do you know that the aforesaid Daniel H. Mulchoy, claimant, is an inhabitant of or settled upon any tract of public land on which he has made a settlement and erected a dwelling house and made other improvements since the first day of June, A. D. 1840? If so, describe the tract of land, state the time such settlement was made, and if since that time his residence thereon has been continuous, the kind of dwelling-house erected, and what other improvements

he has made thereon since the time of settlement and for what purpose it is used, and has claimant abandoned a residence on his own land in this Territory to make this settlement?

Ans. The claimant, Daniel H. Mulchoy, is now an inhabitant of and settled upon the northwest quarter of section four [4], township one [1] north, of range 68 west, in the county of Weld, Territory of Colorado, on the 27th day of May, A. D. 1870, and has since that time continued to reside thereon, and has erected a one-story frame dwelling-house, fully enclosed, size 14 by 16 feet, with one door and 2 windows, with shingled roof & board floor, and has plowed and cultivated five [5] acres or more of said tract of land, and built thereon 200 rods or more of post & board fence, and that he uses the land for agricultural and grazing purposes, and has also built a frame stable and corral & dug a well thereon, and has not abandoned a residence on his own land to make this settlement.

(Signed) PAUL LINGER.

Sworn and subscribed to before me this 26th day of November, A. D. 1870.

(Signed) C. H. MCLAUGHLIN,
Receiver of the Land Office at Denver, C. T.

Div. G., Exhibit 4, A. W. B. B: G. H. O. B. M. C.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., 1886.

I, Wm. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed copies of the papers in the matter
173 of Denver, Colorado, pre-emption cash entry No. 1513, in the name of Thomas Faver, are true and literal exemplifications from the originals on file in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed at the City of Washington, on the day and year above written.

[SEAL.] (Signed) WM. A. J. SPARKS,
Commissioner of the General Land Office.

No. 1513.] LAND OFFICE AT DENVER, COLORADO,
Aug. 31*st*, 1870.

It is hereby certified that, in pursuance of law, Thomas Faver, Weld County, Colorado, on this day purchased of the register of this office the lot or northeast quarter of section No. eight [8], in township one [1] north, of range No. 68 west, containing 160 acres, at the rate of two dollars and 50 cents per acre, amounting to four hundred [400] dollars and — cents, for which said Thomas Faver has made payment in full, as required by law:

Now, therefore, be it known, that, on presentation of this certificate to the Commissioner of the General Land Office, the said Thomas Faver shall be entitled to receive a patent for the lot above described.

(Signed) LOUIS DUGAL,
Register.

(Indorsement:) Cash No. 1513. Cash entry, land office at Denver, Colorado, August 31st, 1870. P. A. 1841. D. S. No. 3676. Thos. Faver, Oct. 10, '67, Jan'y 4, '68. Unoff'd Nov. 17, '70., W. No conflict.
174 Approved for patent Jan 19. '71. By Miner, clerk. Patented Feb. 10, 1871. Recorded vol. 3, page, 276. Ex. 2, N. W. 3. No. 1513. Receiver's office at Denver, Colorado, Aug. 31st, 1870. Received from Thomas Faver, of Weld County, Colorado, the sum of four hundred dollars and — cents, being in full for the northeast quarter of section No. eight [8], in township one [1] north, of range No. 68 west, containing one hundred and sixty acres, at $2.50 per acre. $400.

(Signed) C. H. McLAUGHLIN,
Receiver.

No. 1513.] RECEIVER'S OFFICE AT DENVER, C. T.
August 31st, 1870.

Received from Thomar Faver, of Weld County, Colorado, the sum of four hundred dollars, being in full for the northeast quarter of section No. eight [8], in township one [1] north, of range 68 west, containing 160 acres, at $2.50 per acre. $400.

(Signed) C. H. McLAUGHLIN,
Receiver.

Pre-emption act 1841. Pat. delivered by R. R.

Affidavit required of pre-emption claimant.

I, Thomas Faver, claiming the right of pre-emption under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the sale of the public lands and to grant pre-emption rights," approved September 4, 1841, to the northeast quarter of section number eight, of township No. one [1] north, of range number 68 west, subject to sale at Denver, Colorado, do solemnly swear that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor have I settled upon and improved the said land to sell the same on speculation, but in good faith to appropriate it to my own exclusive use or benefit, and that I have not directly or indirectly made any
175 agreement or contract in any way or manner with any person or *or* persons whatsoever, by which the title which I may acquire from the Government of the United States should inure in whole or in part to the benefit of any person except myself.

(Signed) THOMAS FAVER.

I, C. H. McLaughlin, receiver of the land office at Denver, Colorado, do hereby certify that the above affidavit was taken and subscribed to before me, this 31st day of August, A. D. 1870.

(Signed) C. H. McLAUGHLIN,
Receiver.

U. S. DISTRICT LAND OFFICE.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

In the matter of proof required of Thomas Faver to enter, under the

pre-emption laws, the northeast quarter of section eight (8), in township one (1) north, of range 68 west, containing 160 acres, in the county of Weld and Territory of Colorado, William Roads, being duly sworn, on his oath deposes and says in answer to interrogatories proposed to him by the receiver of the land office at Denver, Territory of Colorado, as follows, viz.:

1. Interrogatory. What is your name, age, occupation and residence?

Ans. William Roads, age 33 years, a farmer and stock raiser; I reside in the county of Weld and Territory of Colorado.

2. Interrogatory. Are you acquainted with Thomas Faver, the claimant? If so, how long have you known him, and do you know that on the 4th day of January, A. D. 1868, he was a citizen of the United States, or that he had filed his declaration of becoming a citizen?

Ans. I have known Thomas Faver, the claimant, for over three (3) years last past, and know that on the 4th day of January, A. D. 1868, he was a citizen of the United States.

176 3. Interrogatory. Is the aforesaid claimant a single man, over the age of twenty-one years, or the head of a family? If the head of a family, of what does that family consist?

Ans. He is the head of a family, consisting of a wife and three (3) children.

4. Interrogatory. Do you know that the aforesaid Thomas Faver, claimant, is an inhabitant of or settled upon any tract of public land on which he has made a settlement and erected a dwelling-house and made other improvements since the first day of June, A. D. 1840? If so, describe the tract of land; state the time such settlement was made, and if since that time his residence thereon has been continuous; the kind of dwelling-house erected, and what other improvements he has made thereon since the time of settlement, and for what purpose it is used; and has claimant abandoned a residence on his own land in this Territory to make this settlement?

Ans. The claimant, Thomas Faver, is now an inhabitant of and settled upon the northeast quarter of section eight (8), township one (1) north, of range 68 west, in the county of Weld, Territory of Colorado, on the 10th day of October, A. D. 1867, and has since that time continued to reside thereon, and has erected a one-story hewed log dwelling-house fully enclosed, size 18 by 24 feet, with one door and three windows, with board floor and board roof, and has plowed and cultivated twenty-five (25) acres or more of said tract of land, and built thereon three hundred rods or more of post and pole fence; and that he uses the land for agricultural and stock-raising purposes, and he has also built thereon a log stable 14 x 20 ft., a large pole corral, and has dug a well and irrigating ditches thereon, and has not abandoned a residence on his own land to make this settlement.

(Signed) WILLIAM ROADS.

Sworn and subscribed to before me, this 31st day of August, A. D. 1870.

177 C. H. MCLAUGHLIN,
Receiver of the Land Office at Denver, C. T.

Div. "G." Exhibit 5. A. W. B. B. & G. H. O. B. M. C.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., 1886.

I, Wm. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed copies of papers in the matter of the Denver, Colorado, pre-emption cash entry, No. 1514, in the name of William Roads, are true and literal exemplifications from the originals on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] (Signed) WM. A. J. SPARKS,
Commissioner of General Land Office.

No. 1514.] LAND OFFICE AT DENVER, C. T.,
Aug. 31*st*, 1870.

It is hereby certified that in pursuance of law, William Roads, Weld County, Colorado, on this day purchased of the register of this office the lot or southeast quarter of section No. eight (8), in township one (1) north, of range No. 68 west, containing 160 acres, at the rate of two dollars and 50 cents per acre, amounting to four hundred dollars, for which the said William Roads has made payment in full as required by law.

Now, therefore, be it known that on presentation of this certificate to the Commissioner of the General Land Office the said William Roads shall be entitled to receive a patent for the lot above described.

178 (Signed) LOUIS DUGAL,
Register.

(Indorsement:) Cash, No. 1514. Cash entry. Land office at Denver, Colorado. P. A., Aug. 31st. 1870. D. S. No. 3677. Wm. Roads. Oct. 12, '67, Jan'y 4, '68, unoff'd. Nov. 17, '70. No conflict. W. Approved for pat. Jan. 19, '71, by Miner, clerk. Patented Feb. 10, 1871. Recorded, vol. 3, page 277, ex. 2 Md. 3.

No. 1514.] RECEIVER'S OFFICE AT DENVER, C. T.,
Aug. 31*st*, 1870.

Received from William Roads, of Weld County, Colorado, the sum of four hundred dollars, being in full for the southeast quarter of section No. 8, in township No. one (1) north, of range No. 68 west, containing 160 acres, at $2.50 per acre.

$400.

(Signed) C. H. MCLAUGHLIN,
Receiver.

No. 1514.] RECEIVER'S OFFICE AT DENVER, C. T.,
Aug. 31*st*, 1870.

Received from William Roads, of Weld County, Colorado, the sum of four hundred dollars, being in full for the southeast quarter of section No.

eight, in township No. one (1) north, of range No. 68 west, containing 160 acres at $2.50 per acre.

$400.

(Signed) C. H. McLAUGHLIN,
Receiver.

(Pat. delivered by R. R. Pre-emption act, 1841.)

Affidavit required of pre-emption claimant.

I, William Roads, claiming the right of pre-emption under the provisions of the act of Congress entitled "An act to appropriate the proceeds and sale of the public lands and to grant pre-emption rights," 179 approved September 4th, 1841, to the southeast quarter of section number, eight of township number one (1), north of range number 68 west, subject to sale at Denver, Colorado, do solemnly swear that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor have I settled upon and improved the said land to sell *tae* same on speculation, but in good faith to appropriate it to my own exclusive use or benefit, and that I have not directly or indirectly made any agreement or contract in any way or manner, with any person or persons whatsoever, by which the title which I may acquire from the Government of the United States should inure in whole or in part to the benefit of any person except myself.

(Signed) WILLIAM ROADS.

I, C. H. McLaughlin, receiver of the land office at Denver, Colorado, do hereby certify that the above affidavit was taken and subscribed to before me this 31st day of August, A. D. 1870.

(Signed) C. H. McLAUGHLIN,
Receiver.

U. S. DISTRICT LAND OFFICE.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

In the matter of proof required of William Roads to enter under the pre-emption laws the southeast quarter of section eight, in township one (1) north, of range 68 west, containing 160 acres, in the county of Weld and Territory of Colorado, Thomas Faver, being duly sworn, on his oath deposes and says, in answer to the interrogatories proposed to him by the receiver of the land office at Denver, Territory of Colorado, as follows, viz:

1. Interrogatory. What is your name, age, occupation, and residence?

Ans. Thomas Faver; aged 37 years; a farmer; I reside in the 180 county of Weld and Territory of Colorado.

2. Interrogatory. Are you acquainted with William Roads, the claimant? If so, how long have you known him, and do you know that on the 4th day of January, A. D. 1868, he was a citizen of the United States, or that he had filed his declaration of intention to become a citizen?

Ans. I have known William Roads, the claimant, for over three (3)

years last past, and know that on the 4th day of January, A. D. 1868, he was a citizen of the United States.

3. Interrogatory. Is the aforesaid claimant a single man, over the age of twenty-one years, or the head of a family? If the head of a family, of what does that family consist?

Ans. He is the head of a family consisting of a wife and one child.

4. Interrogatory. Do you know that the aforesaid William Roads, claimant, is an inhabitant of or settled upon any tract of public land on which he has made a settlement and erected a dwelling-house and made other improvements since the first day of June, A. D. 1840? If so, describe the tract of land, state the time such settlement was made, and if since that time his residence thereon has been continuous, the kind of dwelling-house erected, and what other improvements he has made thereon since the time of settlement, and for what purpose it is used; and has claimant abandoned a residence on his own land in this Territory to make this settlement?

Ans. The claimant, William Roads, is now an inhabitant of and settled upon the southeast quarter of section eight (8), township one north, of range 68 west, in the county of Weld, Territory of Colorado, on the 12th day of October, A. D. 1867, and has since that time continued to reside thereon, and has erected a one-story log dwelling-house, fully enclosed, size 18 by 20 feet, with one door and 2 windows, with board floor and board roof, and has plowed and cultivated twenty acres or more
181 of said tract of land, and built thereon 240 rods or more of post and pole fence, that he uses the land for agricultural and stock raising purposes. He has also built a stable and corral and dug a well and irrigating ditch thereon, and has not abandoned a residence on his own land to make this settlement.

(Signed) THOMAS FAVER.

Sworn and subscribed to before me this 31st day of August, A. D. 1870.

(Signed) C. H. MCLAUGHLIN,
Receiver of the Land Office at Denver, C. T.

Div. "Gh." Exhibit 6. A. W. B. B. F. G. H. O. B. M. C.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., ———, 188—.

I, Wm. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed copies of papers in the matter of Denver, Colorado, pre-emption cash entry No. 1544, in the name of John Newton, are true and literal exemplifications from the originals on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year last above written.

[SEAL.] (Signed) WM. A. J. SPARKS,
Commissioner of General Land Office.

Ans. The claimant, John Newton, is now an inhabitant of and settled upon the northeast quarter of section ten (10), township one (1) north, of range 68 west, in the county of Weld, Territory of Colorado, on the 12th day of May, A. D. 1870, and has since that time continued to reside thereon, and has erected a one-story frame dwelling-house, fully
185 enclosed, size 14 by 16 feet, with one door and one window, with board roof and board floor, and has plowed and broken for cultivation 5 acres or more of said tract of land, and built thereon 100 rods or more of post and wire fence, and that he uses the land for agricultural purposes, and has not abandoned a residence on his own land to make this settlement.

(Signed) DAVID OLIVER.

Sworn and subscribed to before me this 17th day of October, A. D. 1870.

(Signed) C. H. MCLAUGHLIN,
Receiver of the Land Office at Denver, C. T.

Exhibit 7. Div. "G," A. W. B. B. F. G. H. O. B. M. C.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., 1886.

I, Wm. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed copies of papers in the matter of Denver, Colorado, pre-emption cash entry No. 1546, in the name of James R. Giddings, are true and literal exemplifications from the originals on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

[SEAL.] (Signed) WM. A. J. SPARKS,
Commissioner of General Land Office.

No. 1546.] LAND OFFICE AT DENVER, COLORADO,
Oct. 17th, 1870.

It is hereby certified that in pursuance of law James R. Geddings, Weld County, Colorado, on this day purchased of the register of this office
186 the lot or northwest quarter of section No. ten (10), in township No. one (1) north, of range No. 68 west, containing one hundred and sixty (160) acres at the rate of two dollars and 50 cents per acre, amounting to four hundred dollars ($400), for which the said James R. Giddings has made payment in full as required by law.

Now, therefore, be it known that on presentation of this certificate to the Commissioner of the General Land Office the said James R. Giddings shall be entitled to receive a patent for the lot above described.

(Signed) LOUIS DUCAL,
Register.

(Pre-emption act, 1841.)

(Endorsement:) Cash No. 1546. Cash entry. Land office at Denver, Colorado. P. A. 1841. October, 17, 1870. D. S. No. 5145. May 16 and

August 12, '70. Unoff'd. Mar. 14, 1871, Woods. No conflict Ex. Approved for pat. March 22, '71. Minor. Clark, Patented Apr. 10, 1871. Vol. 3, page 323, 2 N. and W. 4.

No. 1546.] RECEIVER'S OFFICE AT DENVER, COLORADO,
October 17*th*, 1870.

Received from James R. Giddings, of Weld County, Colorado, the sum of four hundred dollars, being in full for the northwest quarter of section No. ten (10), in Township No. one (1) north, of range No. 68 west, containing 160 acres at $2.50 per acre. $400.

(Signed) C. H. McLAUGHLIN,
Receiver.

(Pre-emption act 1841.)

No. 1546.] RECEIVER'S OFFICE AT DENVER, COLORADO,
October 17*th*, 1870.

Received from James R. Giddings, of Weld County, Colorado, the sum of four hundred dollars, being in full for the northwest quarter of section No. ten (10), in township No. one (1) north, of range 68 west, containing 160 acres at $2.50 per acre. $400.

187 (Signed) C. H. McLAUGHLIN,
Receiver.

(Pre-emption act 1841. Patent delivered by R. R.)

Affidavit required of pre-emption claimant.

I, James R. Giddings, claiming the right of pre-emption under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the sale of the public lands and to grant pre-emption rights," approved September, 1841, to the northwest quarter of section number ten (10), of township number one (1) north, of range number 68 west, subject to sale at Denver, Colorado, do solemnly swear that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my own exclusive use or benefit, and that I have not, directly or indirectly, made any agreement or contract in any way or manner with any person or persons whatsoever, by which the title which I may acquire from the Government of the United States should inure in whole or in part to the benefit of any person except myself.

(Signed) JAMES R. GIDDINGS.

I, C. H. McLaughlin, receiver of the land office at Denver, Colorado, do hereby certify that the above affidavit was taken and subscribed to before me this 17th day of October, A. D. 1870.

(Signed) C. H. McLAUGHLIN,
Receiver.

U. S. DISTRICT LAND OFFICE.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

In the matter of proof required of James R. Giddings to enter
188 under the pre-emption laws the northwest quarter of section ten (10), in township one (1) north, of range 68 west, containing 160 acres, in the County of Weld, and Territory of Colorado, James Kinsman, being duly sworn, upon his oath deposes and says in answer to the interrogatories proposed to him by the receiver of the land office at Denver, Territory of Colorado, as follows, viz:

1. Interrogatory. What is your name, age, occupation, and residence?

Ans. James Kinsman; aged 28 years; a farmer; I reside in the county of Weld and Territory of Colorado.

2. Interrogatory. Are you acquainted with James R. Giddings, the claimant; if so, how long have you known him, and do you know that on the sixteenth day of May, A. D. 1870, he was a citizen of the United States, or that he had filed his declaration to become a citizen?

Ans. I have known James R. Giddings, the claimant, for about two years last past and know that on the 16th day of May, A. D. 1870, he was a citizen of the United States.

3. Interrogatory. Is the aforesaid claimant a single man over the age of twenty-one years or the head of a family; if the head of a family, of what does that family consist?

Ans. He is a single man, over the age of twenty-one years.

4. Interrogatory. Do you know that the aforesaid James R. Giddings, claimant, is an inhabitant of and settled upon any tract of public land on which he has made a settlement and erected a dwelling-house and made other improvements since the first day of June, A. D. 1840; if so describe the tract of land, state the time such settlement was made, and if since that time his residence thereon has been continuous, the kind of dwelling-house erected, and what other improvements he has made thereon since the time of settlement, and for what purpose it is used, and has claimant abandoned a residence on his own land in this Territory to make this settlement?

Ans. The claimant, James R. Giddings, is now an inhabitant of
189 and settled upon the northwest quarter of section ten (10) in township one (1) north, of range 68 west, in the county of Weld and Territory of Colorado, on the 16th day of May, A. D. 1870, and has since that time continued to reside thereon, and has erected a one-story frame dwelling-house, fully enclosed size 16 by 18 feet, with one door and 2 windows, with shingled roof and board floor, and plowed and broken for cultivation twelve (12) acres or more of said tract of land, and built thereon over 200 rods or more of post and wire fence, and that he uses the land for agricultural purposes and has also built on said tract a frame stable and a corral, and has dug a well thereon, and has not abandoned a residence on his own land to make this settlement.

(Signed) JAMES KINSMAN.

Sworn and subscribed to before me this 17th day of October, A. D. 1870.

(Signed) C. H. MCLAUGHLIN,
Receiver of the Land Office at Denver, C. T.

Div. "G," Exhibit 8. A. W. B. B. F. G. H. O. B. M. C.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., 1886.

I, Wm. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed copies of papers in the matter of Denver, Colorado, pre-emption cash entry No. 1557, in the name of Mark Moltz, are true and literal exemplifications from the originals on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] (Signed) WM. A. J. SPARKS,
Commissioner of General Land.

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190 No. 1557.] LAND OFFICE AT DENVER, C. T.
Oct. 27th, 1870.

It is hereby certified that in pursuance of law, Mark Moltz, Weld County of Colorado, on this day purchased of the register of this office. the lot or southwest quarter of section No. fourteen (14), in township No. one (1) north, of range 68 west, containing 160 acres, at the rate of two dollars and 50 cents per acre, amounting to 400 dollars, for which the said Mark Moltz has made payment in full as required by law.

Now, therefore, be it known that on presentation of this certificate to the Commissioner of the General Land Office the said Mark Moltz shall be entitled to receive a patent for the lot above described.

(Signed) LOUIS DUGAL,
Register.

(Pre-emption act 1841.)

(Indorsement:) No. 1557. Cash entry. Land office at Denver, Colorado, October 27th, 1870. P. A. 1841. D. S. No. 5200. June 30, 1870. Unoff'd. March 14, 1871. Woods. No conflict. Ex. approved por. pat. Mar. 22nd, '71. By Miner, clerk. Patented April 10th, 1871. Recorded vol. 3, page 325. 2 N & W. 5.

No. 1557.] RECEIVER'S OFFICE AT DENVER, C. T.
Oct. 27th, 1870.

Received from Mark Moltz, of Weld County, Colorado, the sum of four hundred dollars being in full for the southwest quarter of section No. 14, in township one (1) north, of range No. 68 west, containing 160 acres, at $2.50 per acre. $400.

C. H. MCLAUGHLIN,
Receiver.

(Pre-emption act, 1841.)

191 No. 1557.]

RECEIVER'S OFFICE AT DENVER, COLO.,
Oct. 27th, 1870.

Received from Mark Moltz, of Weld County, Colorado, the sum of four

hundred dollars being in full for the southwest quarter of section No. (14) in township one (1) north, of range 68 west, containing 160 acres, at $2.50 per acre. $400.

(Signed) C. H. McLAUGHLIN,
Receiver.

(Pre-emption act, 1841. Patent delivered by R. R.)

Affidavit required by pre-emption claimant.

I, Mark Moltz, claiming the right of pre-emption under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the sale of the public lands, and to grant pre-emption rights," approved September 4th, 1841, to the southwest quarter of section number 14, of township number one (1) north, of range number 68 west, subject to sale at Denver, Colorado, do solemnly swear that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor have I settled upon and improved said land to sell the same on speculation, *but* in good faith to appropriate it to my own exclusive use or benefit, and that I have not directly or indirectly, made any agreement or contract in any way or manner with any person or persons whatsoever, by which the title which I may acquire from the Government of the United States should inure in whole or in part to the benefit of any person except myself.

(Signed) MARK MOLTZ.

I, C. H. McLaughlin, receiver of the land office at Denver, Colorado, do hereby certify that the above affidavit was taken and subscribed before me, this 27th day of October, A. D. 1870.

(Signed) C. H. McLAUGHLIN,
Receiver.

192 U. S. DISTRICT LAND OFFICE.

TERRITORY OF COLORADO,
County of Arapahoe ss:

In the matter of proof required of Mark Moltz to enter under the pre-emption laws the southwest quarter of section fourteen, in township one (1) north, of range 68 west, containing 160 acres, in the county of Weld and Territory of Colorado, Sylvanus Drew, being duly sworn, upon his oath deposes and says in answer to the interrogatories proposed to him by the receiver of the land office at Denver, Territory of Colorado, as follows, viz:

1. Interrogatory. What is your name, age, occupation, and residence?

Ans. Sylvanus Drew; aged 33 years; a farmer; I reside in the county of Weld and Territory of Colorado.

2. Interrogatory. Are you acquainted with Mark Moltz, the claimant? If so, how long have you known him, and do you know that on the first day of June, A. D. 1870, he was a citizen of the United States, or that he had filed his declaration to become a citizen?

Ans. I have known Mark Moltz, the claimant, for over one (1) year last past, and know that on the first day of June, A. D. 1870, he was a citizen of the United States.

3. Interrogatory. Is the aforesaid claimant a single man over the age of twenty-one years, or the head of a family? If the head of a family, of what does that family consist?

Ans. He is the head of a family consisting of a wife and one child.

193 4. Interrogatory. Do you know that the aforesaid Mark Moltz, claimant, is an inhabitant of and settled upon any tract of public land on which he has made a settlement and erected a dwelling house and made other improvements since the first day of June, A. D. 1840. If so, describe the tract of land, state the time such settlement was made, and if since that time his residence thereon has been continuous, the kind of dwelling house erected, and what other improvements he has made thereon since the time of settlement, and for what purpose it is used, and has claimant abandoned a residence on his own land in this Territory to made this settlement?

Ans. The claimant, Mark Moltz is now an inhabitant and settled upon the southwest quarter of section (14), township one (1) north, of range 68 west, in the county of Weld, Territory of Colorado, on the first day of June, A. D. 1870, and has since that time continued to reside thereon, and has erected a one-story frame dwelling house, fully enclosed, size 16x20 feet with two doors and three windows, with shingled roof and board floor, and has plowed and broken over one (1) acre or more of said tract of land, and has built thereon over 80 rods or more of post-and-board fence, and that he uses the land for agricultural and stock raising purposes, and has also built a stable, two corrals, and dug two wells thereon, and has not abandoned a residence on his own land to make this settlement.

(Signed) SYLVANUS DREW.

Sworn and subscribed to before me, this 27th day of October, A. D. 1870.

(Signed) C. H. MCLAUGHLIN,
Receiver of the Land Office at Denver, C. T.

194 Exhibit 9. Div. "G," A. W. B. B. F. G. H. O. B. M. C.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., 1886.

I, Wm. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed copies of papers in the matter of Denver, Colorado, pre-emption cash entry No. 1562, in the name of George D. Miner, are true and literal exemplifications from the originals on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year last above written.

[SEAL.] (Signed) WM. A. J. SPARKS,
Commissioner of General Land Office.

No. 1562.] LAND OFFICE AT DENVER, C. T.
Oct. 31st, 1870.

I do hereby certify that in pursuance of law, George D. Miner, Weld County, Colorado, on this day purchased of the register of this office lot

or southeast quarter of section No. 14, in township No. one [1] north, of range No. 68 west, containing 160 acres, at the rate of two dollars and 50 cents per acre, amounting to four hundred (400) dollars for which the said George D. Miner has made payment in full as required by law.

Now, therefore, be it known that on presentation of this certificate to the Commissioner of the General Land Office the said George D. Miner shall be entitled to receive a patent for the lot above described.

(Signed) LOUIS DUGAL,
Register.

(Pr-emption act, 1841.)

195 (Indorsement:) No. 1562. Cash. Denver, Colorado, October 31st, 1870. P. A. 1841. D. S. No. 5199. June 1st and Aug. 30th, '70. Unoff'd. March 14th, 1871. Woods. No. conflict. Approved for patent Mar. 22nd, '71. Minor clerk. April 10th, 1871. Vol. 3, page 328. Ex. 2 N. and M. 5.

No. 1562.] RECEIVER'S OFFICE AT DENVER, COLORADO,
October 31*st*. 1870.

Received from George D. Miner, of Weld County, Colorado, the sum of four hundred dollars, being in full for the southeast quarter of section No. 14 in township No. one (1) north, of range No. 68 west, containing 160 acres, at $2.50 per acre. $400.

(Signed) C. H. MCLAUGHLIN,
Receiver.

(Pre-emption act, 1841. Patent delivered by R. R.)

No. 1562.] RECEIVER'S OFFICE AT DENVER, C. T.,
October 31*st*, 1870.

Received from George D. Miner, of Weld County, Colorado, the sum of four hundred dollars, being in full for the southeast quarter of section No. 14, in township No. one [1] north of range No. 68 west, containing 160 acres, at $2.50 per acre. $400.

(Signed) C. H. MCLAUGHLIN,
Receiver.

(Pre-emption act, 1841.)

Affidavit required of pre-emption claimant.

I, George D. Miner, claiming the right of pre-emption under the provisions of the act of Congress, entitled "An act to appropriate the proceeds of the sale of the public lands, and to grant pre-emption rights" 196 approved September 4th, 1841, to the southeast quarter of section number 14 of township number one (1) north, of range number 68 west, subject to sale at Denver Colorado, do solemnly swear that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my own exclusive use or benefit; and that I have not directly or indirectly, made any agreement or contract, in any way or manner by which

the title which I may acquire from the Government of the United States should inure in whole or in part to the benefit of any person except myself.

(Signed) GEORGE D. MINER.

I, C. H. McLaughlin, receiver of the land office at Denver, Colorado, do hereby certify that the above affidavit was taken and subscribed to before me this 31st day of October, A. D. 1870.

(Signed) C. H. MCLAUGHLIN,
Receiver.

U. S. DISTRICT LAND OFFICE.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

In the matter of proof required of George D. Miner, to enter under the pre-emption laws the southeast quarter of section 14 in township one (1) north, of range 68 west, containing 160 acres in the county of Weld and Territory of Colorado, Edward Drake, being duly sworn, on his oath deposes and says in answer to the interrogatories proposed to him by the receiver of the land office at Denver, Territory of Colorado, as follows, viz:

1. Interrogatory. What is your name, age, occupation and residence?

Ans. Edward Drake, aged 37 years; a farmer. I reside on in
197 the county of Weld and Territory of Colorado.

2. Interrogatory. Are you acquainted with George D. Miner, the claimant? If so, how long have you known him, and do you know that on the first day of June, A. D. 1870, he was a citizen of the United States, or that he had filed his declaration to become a citizen?

Ans. I have known George D. Miner, the claimant, for about nine (9) months last past, and know that on the first day of June, A. D. 1870, he was a citizen of the United States.

3. Interrogatory. Is the aforesaid claimant a single man over the age of twenty-one years, or the head of a family? If the head of a family of what does that family consist?

Ans. He is a single man over 21 years of age.

4. Interrogatory. Do you know that the aforesaid George D. Miner, claimant, is an inhabitant of or settled upon any tract of public land on which he has made a settlement and erected a dwelling-house, and made other improvements since the first day of June, A. D. 1840? If so, describe the tract of land, state the time such settlement was made, and if since that time his residence thereon has been continuous, the kind of dwelling-house erected, and what other improvements he has made thereon since the time of settlement, and for what purpose it is used, and has claimant abandoned a residence on his own land in this Territory to make this settlement.

Ans. The claimant, George D. Miner, is now an inhabitant of and settled upon the southeast quarter of section (14) fourteen, township one (1) north, of range 68 west, in the county of Weld, Territory of Colorado, on the first day of June, A. D. 1870, and has since that time continued to reside thereon, and has erected a one-story frame dwelling-house, fully enclosed, size 14 by 16 feet, with one door and 2 windows, with shingled roof and board floor, and has plowed and cultivated eight (8) acres or

more of said tract of land, and built thereon 200 rods or more of
198 post and board fence, and that he uses the land for agricultural purposes, and has built a frame stable and dug a well thereon, and has not abandoned a residence on his own land to make this settlement.

(Signed) EDWARD DRAKE.

Sworn and subscribed to before me this 31st day of October, A. D. 1870.

C. H. MCLAUGHLIN,
Receiver of the land office at Denver, C. T.

Div. "Gh" Exhibit, 10. A. W. B. B. F. G. H. O. B. M. C.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., 1886.

I, Wm. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed copies of papers in the matter of Denver, Colorado, pre-emption cash entry No. 1564, in the name of Emanuel J. Fisk, are true and literal exemplifications from the originals on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

[SEAL.] (Signed) WM. A. J. SPARKS,
Commissioner of General Land Office.

No. 1564.] LAND OFFICE AT DENVER, C. T.,
October 31st, 1870.

It is hereby certified that, in pursuance of law, Emanuel J. Fisk, Weld County, Colorado, on this day purchased of the register of this office the lot or northwest quarter of section No. 14, in township No. one (1) north, of range No. 68 west, containing 160 acres, at the rate of two dollars and 50 cents per acre, amounting to (400) four hundred dollars, for which the said Emanuel J. Fisk has made payment in full as required by law.

199 Now, therefore, be it known that on presentation of this certificate to the Commissioner of the General Land Office the said Emanuel J. Fisk shall be entitled to receive a patent for the lot above described.

(Signed) LOUIS DUGAL,
Register.

(Pre-emption act, 1841.)

(Endorsement:) Cash No. 1564. Denver, Colorado, October 31st, 1870. P. A., 1841. D. S., 5196. June 2 and Aug. 29th, '70, unoff'd. March 14th, 1871. Woods. No conflict. Approved for patent Mar. 21st, '71. Minor. Patented Apr. 10th, 1871. Recorded vol. 3, page 330. Ex. 2 N. and N. 5.

No. 1564.] RECEIVER'S OFFICE AT DENVER, COLO.,
Oct. 31st, 1870.

Received from Emanuel J. Fisk, of Weld County, Colorado, the sum

of four hundred dollars, being in full for the northwest quarter of section No. 14, in township No. one (1) north, of range No. 68 west, containing 160 acres, at $2.50 per acre. $400.

(Signed) C. H. McLAUGHLIN,
Receiver.

(Pre-emption act, 1841. Patent delivered by R. R.)

No. 1564.] RECEIVER'S OFFICE AT DENVER, C. T.,
Oct. 31*st*, 1870.

Received from Emanuel J. Fisk, of Weld County, Colorado, the sum of four hundred dollars, the same being in full for the northwest quarter of section No. 14, in township No. one (1) north, range of No. 68 west, of containing 160 acres, at $2.50 per acre. $400.

(Signed) C. H. McLAUGHLIN,
Receiver.

(Pre-emption act, 1841.)

200 Affidavit required of pre-emption claimant.

I, Emanuel J. Fisk, claiming the right of pre-emption under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the sale of the public lands, and to grant pre-emption rights," approved September 4th, 1841, to the northwest quarter of section number 14, in township number one (1) north, of range number 68 west, subject to sale at Denver, Colorado, do solemnly swear that I have never had the benefit of any right of pre-emption under this act, and that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor have I settled upon and improved said land to sell the same, but in good faith to appropriate it to my own exclusive use or benefit; and that I have not, directly or indirectly, made any agreement or contract in any way or manner with any person or persons whatsoever by which the title which I may acquire from the Government of the United States should inure in whole or in part to the benefit of any person except myself.

(Signed) EMANUEL J. FISK.

I, C. H McLaughlin, receiver of the land office at Denver, Colorado, do hereby certify that the above affidavit was taken and subscribed before me this 31st day of October, A. D. 1870.

(Signed) C. H. McLAUGHLIN,
Receiver.

U. S. DISTRICT LAND OFFICE.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

In the matter of proof required of Emanuel J. Fisk to enter, under the pre-emption laws, the northwest quarter of section fourteen in township one (1) north, of range 68 west, containing 160 acres, in the county
201 of Weld and Territory of Colorado, Edward Drake, being duly sworn upon his oath deposes and says in answer to interrogatories proposed

to him by the receiver of the land office at Denver, Territory of Colorado, as follows, viz:

1. Interrogatory. What is your name, age, occupation and residence?

Ans. Edward Drake, aged 37; a farmer; I reside in the county of Weld and Territory of Colorado.

2. Interrogatory. Are you acquainted with Emanuel J. Fisk, the claimant; if so, how long have you known him, and do you know that on the second day of June, A. D. 1870, he was a citizen of the United States, or that he had filed his declaration to become a citizen?

Ans. I have known Emanuel J. Fisk, the claimant for over two years last past, and know that on the second day of June. A. D. 1870, he was a citizen of the United States.

3. Interrogatory. Is the aforesaid claimant a single man over the age of twenty-one years, or the head of a family? If the head of a family, of what does that family consist?

Ans. He is the head of a family consisting of a wife and one child.

4. Interrogatory. Do you know that the aforesaid Emanuel J. Fisk, claimant, is an inhabitant of or settled upon any tract of public land on which he has made a settlement and erected a dwelling-house and made other improvements since the first day of June, A. D. 1840? If so describe the tract of land, state the time such settlement was made and if since that time his residence thereon has been continuous, the kind of dwelling-house erected and what other improvements he has made thereon since the time of settlement; and for what purpose it is used and has claimant abandoned a residence on his own land in this Territory to make this settlement?

Ans. The claimant, Emanuel J. Fisk, is now an inhabitant of and
202 settled upon the northwest quarter section of 14 township one (1) north of range sixty-eight (68) west in the county of Weld and Territory of Colorado, on the second day of June, A. D. 1870, and has since that time continued to reside thereon; and has erected a one-story frame dwelling-house, fully enclosed size, 16 by 20 feet, with two doors and 4 windows, with shingled roof and board floor, and has plowed and cultivated (3) acres or more of said tract of land, and built thereon 100 rods or more of post and board fence, and that he uses the land for agricultural and grazing purposes; and has also built a frame stable, a corral, a milk-house, a chicken-house, and dug a well thereon; and has not abandoned a residence on his own land to make this settlement.

(Signed) EDWARD DRAKE.

Sworn and subscribed to before me, this 31st day of October, A. D. 1870.

(Signed) C. H. MCLAUGHLIN,
Receiver of the land office at Denver, C. T.

Div. "G" Exhibit 11. A. W. B. B. F. G. H. O. B. M. C.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C. 1886.

I, Wm. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed copies of papers in the matter of Denver,

Colorado, cash entry, No. 1563, in the name of Edward Drake, are true and literal exemplifications from the originals on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year last above written.

[SEAL.] (Signed) WM. A. J. SPARKS,
Commissioner of General Land Office.

203 No. 1563.] LAND OFFICE AT DENVER, C. T.
Oct. 31st, 1870.

It is hereby certified that, in pursuance of law, Edward Drake, Weld County, Colorado, on this day purchased of the register of this office the northeast quarter of section No. 14 in township No. one (1) north, of range No. 68 west, containing 160 acres, at the rate of two dollars and 50 cents per acre, amounting to four hundred (400) dollars, for which the said Edward Drake has made payment in full as required by law.

Now, therefore, be it known that on presentation of this certificate to the Commissioner of the General Land Office the said Edward Drake shall be entitled to receive a patent for the lot above described.

(Signed) LOUIS DUGAL,
Register.

(Pre-emption act, 1841.)

1563. Cash. Denver, Colorado, October 31, 1870. P. A. 1841, D. S. No. 5188. May 22 and Aug. 26th, 1870. Unoff'd. Mar. 14, 1871. Woods. No conflict. Approved for patent Mar. 22, '71. Minor. Apr. 10th, 1871. Vol. 3, page 329. Ex. 2. N. W. 5.

No. 1563.] RECEIVER'S OFFICE AT DENVER, C. T.,
October, 1870.

Received from Edward Drake, of Weld County, Colorado, the sum of four hundred dollars, being in full for the northeast quarter of section No. 14, in township No. one (1) north, of range No. 68 west, containing 160 acres, at $2.50 per acre. $400.

(Signed) C. H. MCLAUGHLIN,
Receiver.

(Pre-emption act, 1841.)

204 No. 1563.] RECEIVER'S OFFICE AT DENVER, C. T.,
October, 1870.

Received from Edward Drake, of Weld County, Colorado, the sum of four hundred dollars, being in full for the northeast quarter of section No. 14, in township No. one [1], north of range No. 68 west, containing 160 acres, at $2.50 per acre. $400.

(Signed) C. H. MCLAUGHLIN,
Receiver.

Pre-emption act, 1841.

Affidavit required of pre-emption claimant.

I, Edward Drake, claiming the right of pre-emption under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the

sale of the public lands and to grant pre-emption rights," approved September 4th, 1841, to the northeast quarter of section number 14 of township No. one [1], north of range No. 68 west, subject to sale at Denver, Colorado, do solemnly swear that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor have I settled upon and improved the same on speculation, but in good faith to appropriate it to my own exclusive use or benefit, and that I have not directly or indirectly made any agreement or contract in any way or manner with any person or persons whatsoever, by which the title which I may acquire from the Government of the United States should inure in whole or in part to the benefit of any person except myself.

(Signed) EDWARD DRAKE.

I, C. H. McLaughlin, receiver of the land office at Denver, Colorado, do hereby certify that the above affidavit was taken and subscribed to before me this 31st day of October, A. D. 1870.

205 (Signed) C. H. MCLAUGHLIN,
Receiver.

U. S. DISTRICT LAND OFFICE.

TERRITORY OF COLORADO:
County of Arapahoe, ss:

In the matter of proof required of Edward Drake, to enter under the pre-emption laws the northeast quarter of section 14 in township one [1], north of range 68 west, containing 160 acres, in the county of Weld and Territory of Colorado, Emanuel J. Fisk, being duly sworn on his oath deposes and says in answer to interrogatories proposed to him by the receiver of the land office at Denver, Territory of Colorado, as follows, viz:

1. Interrogatory. What is your name, age, occupation, and residence?

Ans. Emanuel J. Fisk; aged 27 years; a farmer. I reside in the county of Weld and Territory of Colorado.

2. Interrogatory. Are you acquainted with Edward Drake, the claimant? If so, how long have you known him, and do you know that on the 22nd day of May, A. D. 1870, he was a citizen of the United States, or that he had filed his declaration of intention to become a citizen?

Ans. I have known Edward Drake, the claimant, for over two [2] years last past, and know that on the 22nd day of May, A. D. 1870, he was a citizen of the United States.

3. Interrogatory. Is the aforesaid claimant a single man over the age of twenty-one years or the head of a family? If the head of a family, of what does that family consist?

Ans. He is a single man over twenty-one years of age.

4. Interrogatory. Do you know that the aforesaid Edward Drake, claimant, is an inhabitant of or settled upon any tract of public land on which he has made a settlement and erected a dwelling-house and

206 made other improvements since the first day of June, A. D. 1840?

If so, describe the tract of land, state the time such settlement was made, and if since that time his residence has been continuous thereon, the kind of dwelling-house erected, and what other improvements he has made

thereon since the time of settlement, and for what purpose it is used, and has the claimant abandoned a residence on his own land in this territory to make this settlement?

Ans. The claimant Edward Drake is now an inhabitant of and settled upon the northeast quarter of section fourteeen [14] township one [1] north of range 68 west, in the county of Weld, Territory of Colorado, on the 22nd day of May, A. D. 1870, and has since that time continued to reside thereon, and has erected a one-story frame dwelling-house fully enclosed, size 14 by 16 feet, with one door and 2 windows, with shingled roof and board floor, and has plowed and cultivated five [5] acres or more of said tract of land and built thereon 150 rods or more of post-and-board fence, and that he uses the land for agricultural purposes and has also built thereon a frame stable and corral, and has not abandoned a residence on his own land to make this settlement.

(Signed) EMANUEL J. FISK.

Sworn and subscribed to before me this 31st day of October, A. D. 1870.

(Signed) C. H. MCLAUGHLIN,
Receiver of the Land Office at Denver, C. T.

Div. "G." Exhibit 12. A. W. B. B. F. G. H. O. B. M. C.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., 1886.

I, Wm. A. J. Sparks, Commissioner of the General Land Office do hereby certify that the annexed copies of papers in the matter of Denver, Colorado, pre-emption cash entry, No. 1543, in the name of David
207 Oliver are true and literal exemplifications from the original filed in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] (Signed) WM. A. J. SPARKS,
Commissioner of General Land Office.

No. 1543.] LAND CFFICE AT DENVER, COLORADO,
Oct. 17th, 1870.

I do hereby certify that in pursuance of law, David Oliver, Weld County, Colorado, on this day purchased of the register of this office the lot or southwest quarter of section No. ten (10), township No. one (1) north, of range No. 68 west, containining 160 acres, at the rate of two and 50 cents per acre, amounting to four hundred (400) dollars, for which the said David Oliver has made payment in full as required by law.

Now, therefore, be it known that on presentation of this certificate to the Commissioner of the General Land Office, the said David Oliver shall be entitled to receive a patent for the lot above described.

(Signed) LOUIS DUGAL,
Register.

(Pre-emption act, 1841.)

(Endorsement:) No. 1543. Cash entry. Land office at Denver, Colorado. October 17th, 1870. P. A., 1841. D. S. No. 5144. May 13 & Aug. 12, '70. Unoff'd Mar. 14, 1871. Woods. No conflict. Ex. Approved for pat. Mar. 21, 1871. By Minor, clerk. Patented Apr. 10th, 1871. Recorded vol. 3, page 320. 2 N. & W., 4.

No. 1543.] RECEIVER'S OFFICE AT DENVER, COLORADO,
Oct. 17th, 1870.

208 Received from David Oliver, of Weld County, Colorado, the sum of four hundred dollars, being in full for the southwest quarter of section No. ten (10), in township No. one (1) north, of range No. 68 west, containing 160 acres, at $2.50 per acre.

(Signed) C. H. McLAUGHLIN,
Receiver.

$400. (Pre-emption act, 1841.)

No. 1543.] RECEIVER'S OFFICE AT DENVER, COLORADO,
Oct. 17th, 1870.

Received from David Oliver, of Weld County, Colorado, the sum of four hundred dollars, being in full for the southwest quarter section No. ten (10), in township No. one (1) north, of range No. 68 west, containing 160 acres, at $2.50 per acre.

(Signed) C. H. McLAUGHLIN,
Receiver.

$400. (Pre-emption act, 1841.)

Affidavit required of pre-emption claimants.

I, David Oliver, claiming the right of pre-emption under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the sale of the public lands, and to grant pre-emption rights," approved September 4th, 1841, to the southwest quarter of section number ten (10), of township number one (1) north, of range number 68 west, subject to sale at Denver, Colorado, do solemnly swear that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor have I settled upon and improved the same on speculation, but in good faith to appropriate it to my own exclusive use or benefit; and that I have not directly or indirectly made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which I may acquire from the Government of the
209 United States should inure in whole or in part to the benefit of any person except myself.

(Signed): DAVID OLIVER.

I, C. H. McLaughlin, receiver of the land office at Denver, Colorado, do hereby certify that the above affidavit was taken and subscribed to before me, this 17th day of October, A. D. 1870.

(Signed) C. H. McLAUGHLIN,
Receiver.

U. S DISTRICT LAND OFFICE.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

In the matter of proof required of David Oliver to enter, under the pre-emptiod laws, the Southwest quarter of section ten (10), in township one (1) north, of range 68 west, containing 160 acres, in the county of Weld and Territory of Colorado, John Newton, being duly sworn, upon his oath deposes and says in answer to the interrogatories proposed to him by the receiver of the land office at Denver, Territory of Colorado, as follows, viz.

1. Interrogatory. What is your name, age, occupation and residence?

Ans. John Newton, aged 23 years, a farmer. I reside in the county of Weld and Territory of Colorado.

2. Interrogatory. Are you acquainted with David Oliver, the claimant? If so, how long have you known him, and do you know that on the 13th day of May, A. D. 1870, he was a citizen of the United States, or that he had filed his declaration to become a citizen?

Ans. I have known David Oliver the claimant for over one (1) year last past, and know that on the 13th day of May, A. D. 1870, he was a citizen of the United States.

210 3. Interrogatory. Is the aforesaid claimant a single man over the age of twenty-one years, or the head of a family; if the head of a family, of what does that family consist?

Ans. He is a single man over the age of twenty-one years.

4. Interrogatory. Do you know that the aforesaid David Oliver, claimant, is an inhabitant of or settled upon any tract of public land on which he has made a settlement and erected a dwelling-house, and made other improvements since the first day of June, A. D. 1840; if so, describe the tract of land, state the time such settlement was made, and if since that time his residence thereon has been continuous, the kind of dwelling-house erected, and what other improvements he has made thereon since the time of settlement, and for what purpose it is used; and has claimant abandoned a residence on his own land in this Territory to make this settlement?

Ans. The claimant, David Oliver, is now an inhabitant of and settled upon the southwest quarter of section ten (10) township (1) north, of range 68 west, in the county of Weld and Territory of Colorado, on the 13th day of May, A. D. 1870, and has since that time continued to reside thereon, and has erected a one story frame dwelling-house, fully enclosed, size 16 by 20 feet, with one door and 2 windows, with shingled roof and board floor; and has plowed and broken for cultivation eight acres or more of said tract of land, and built thereon about 100 rods of post & wire fence, and that he uses the land for agricultural purposes, and has built a frame stable thereon, and has not abandoned a residence on his own land to make this settlement.

(Signed) JOHN NEWTON.

Sworn and subscribed to before me this 17th day of October, A. D. 1870.

(Signed) C. H. MCLAUGHLIN,
Receiver of the land office at Denver, C. T.

211 Div. "G," Exhibit 15. A. W. B. B. F. G. M. C. H. O. B.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., 1886.

I, Wm. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed copies of papers in the matter of Denver, Colorado, pre-emption cash entry No. 1558, in the name of Sylvanus Drew, are true and literal exemplifications from the originals on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] (Signed) WM. A. J. SPARKS,
Commissioner of General Land Office.

No. 1558.] LAND OFFICE AT DENVER, C. T.,
Oct. 27th, 1870.

It is hereby certified that in pursuance of law, Sylvanus Drew, Weld County, Colorado, on this day purchased of the register of this office the lot or southwest quarter of section No. four (4), in township No. one (1) north, of range No. 68 west, containing 160 acres, at the rate of two dollars and 50 cents per acre, amounting to four hundred (400) dollars, for which the said Sylvanus Drew has made payment in full as required by law.

Now, therefore, be it known that on presentation of this certificate to the Commissioner of the General Land Office the said Sylvanus Drew shall be entitled to receive a patent for the lot above described.

(Signed)
LOUIS DUGAL,
Register.

(Pre-emption act, 1841.)

212 (Endorsement:) Cash No. 1558. Cash entry. Land Office at Denver, Colorado, October 27, 1870. P. A., 1841. D. S. No. 1587. June 15 and August 26th, 1870. Unoff'd, Mar. 14, 1871. Woods. No conflict. Approved for patent, Mar. 22, '71. By Minor, clerk. Patented Apr. 10, 1871. Recorded, vol. 3, page 326. Ex. 2, N. and W. 2.

No. 1558.] RECEIVER'S OFFICE AT DENVER, C. T.,
Oct. 27th, 1870.

Received from Sylvanus Drew, of Weld County, Colorado, the sum of four hundred dollars, being in full for the southwest quarter of section No. 4, in township No. one (1) north, of range No. 68 west, containing 160 acres, at $2.50 per acre. $400.

(Signed) C. H. MCLAUGHLIN,
Receiver.

(Pre-emption act, 1841.)

No. 1558.] RECEIVER'S OFFICE AT DENVER, COLO,
Oct. 27th, 1870.

Received of Sylvanus Drew, of Weld County, Colorado, the sum of four hundred dollars, being in full for the southwest quarter of section No. 4, in township No. one (1) north, of range No. 68 west, containing 160 acres, at $2.50 per acre. $400.

C. H. MCLAUGHLIN,
Receiver.

(Pre-emption act, 1841. Pat. delivered by R. R.)

Affidavit required of pre-emption claimant.

I, Sylvanus Drew, claiming the right of pre-emption under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the sale of the public lands, and to grant pre-emption rights," approved September 4th, 1841, to the southwest quarter of section number four (4) of township number one (1) north, of range number 68 west, sub-
213 ject to sale at Denver, Colorado, do solemnly swear that I have never had the benefit of any right of pre-emption under this act. That I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor have I settled upon and improved said land, and to sell the same on speculation, but in good faith to appropriate it to my own exclusive use or benefit; and that I have not, directly or indirectly, made any agreement or contract in any way or manner, with any person or persons whatsoever, by which the title which I may acquire from the Government of the United States should inure in whole or in part to the benefit of any person except myself.

(Signed) SYLVANUS DREW.

I, C. H. McLaughlin, receiver of the land office at Denver, Colorado, do hereby certify that the above affidavit was taken and subscribed to before me on this 27th day of October, A. D. 1870.

(Signed) C. H. MCLAUGHLIN,
Receiver.

U. S. DISTRICT LAND OFFICE.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

In the matter of proof required of Sylvanus Drew to enter, under the pre-emption laws, the southwest quarter of section four (4), in township one (1) north, of range 68 west, containing 160 acres in the county of Douglas, and Territory of Colorado, Mark Moltz, being duly sworn, upon his oath deposes and says in answer to the interrogatories proposed to him by the receiver of the land office at Denver, Territory of Colorado, as follows, viz:

1. Interrogatory. What is your name, age, occupation, and residence?

Ans. Mark Moltz; aged, 29 years; a farmer; I reside in the
214 county of Weld and Territory of Colorado.

2 Interrogatory. Are you acquainted with Sylvanus Drew, the claimant? If so, how long have you known him, and do you know that on

the first day of June, A. D. 1870, he was a citizen of the United States or that he had filed his declaration of intention to become a citizen?

Ans. I have known Sylvanus Drew, claimant, for over one year (1) last past, and know that on the first day of June, A. D. 1870, he was a citizen of the United States.

3 Interrogatory. Is the aforesaid claimant a single man over the age of twenty-one years, or the head of a family? If the head of a family, of what does that family consist?

Ans. He is a single man over 21 years of age.

4 Interrogatory. Do you know that the aforesaid Sylvanus Drew, claimant, is an inhabitant of or settled upon any tract of public land on which he has made a settlement and erected a dwelling-house, and made other improvements since the first day of June, A. D. 1840; if so, describe the tract of land, state the time such settlement was made, and if since that time his residence thereon has been continuous, the kind of dwelling-house erected, and what other improvements he has made thereon since the time of settlement, and for what purpose it is used, and has claimant abandoned a residence on his own land in this Territory to make said settlement?

Ans. The claimant, Sylvanus Drew, is now an inhabitant of, and settled upon the southwest quarter of section four, township one (1), north of range 68 west, in the county of Weld, Territory of Colorado, on the first day of June, A. D. 1870, and has since that time continued to reside thereon, and has erected a one-story frame dwelling-house, fully enclosed, size 14 by 16 feet, with one door and 2 windows, with shingled roof and board floor; and has plowed and broken three (3) acres or more
215 of said tract of land, and built thereon 100 rods or more of post and board fence, and that he has used the land for agricultural and stock raising purposes, and has built thereon a frame stable and corral, and has dug a well thereon, and has not abandoned a residence on his own land to make this settlement.

(Signed) MARK MOLTZ.

Sworn and subscribed to before me this 27th day of October, A. D 1870.

(Signed) C. H. MCLAUGHLIN,
Receiver of the land office at Denver, C. T.

Exhibit No. 14. A. W. B. 250, C. Department of the Interior, R. & R. R. Div. Approved Apr. 2nd, 1886.

No. 436. Condensed abstract of title to Sec. 4, 8, 10, 14, 1, 68. Exhibit 14, A. W. B. Weld County, Colorado. Compiled from the Weld County abstracts, by James B. Phillips, county clerk, Greeley, Colorado.

Abstract of title to sections 4, 8, 10, 14, *Tp.* 1 *N.*, *R.* 68 *W.*, *sheet No.* 1.

Instrument: Land patent. Grantor, United States to Royal Duff, grantee. Record book No. 7, page No. 79. Date of instrument, June 5th, 1871. Date of filing, Aug. 28th, 1871. Description of property, N. E. Sec. 4, Town. 1 N., R. 68 W. Acres, 157.70. Sheet No. 2. Conveyance No. 1.

Instrument: Warranty deed. Grantor Royal Duff to Grantee David H. Moffat, jr. Tr. Denver Land Association. Consideration, $750. Record book No. 2, page No. 18. Description of property, N. E. Sec. 4, T. 1, R. 68 W. 157 acres. Sheet No. 3. Acknowledged Nov. 28th, 1870. Wm. K. Townsend, notary public, Weld County, Colorado. Conveyance No. 2.

216 Date of instrument, Nov. 28th, 1870. Date of filing, Dec. 14th, 1870.

Instrument: Land patent. Grantor, United States to Paul Linger, grantee. Record book No. 7, page 78. Description of property, SE., sec. 4, T. 1, R. 68 W. Acres, 160. Sheet No. 4. Conveyance No. 3. Date of instrument, June 5th, 1871. Date of filing Aug. 31st, 1871.

Instrument: Warranty deed. Grantor, Paul Linger, grantee to David H. Moffat, jr., tr. Denver Land Association consideration, $800. Record book No. 2, page No. 17. Description of property, SE. ¼ S. 4, T. 1, R. 68 W. Acres, 160. Sheet No. 5. Conveyance No 4. Acknowledged Nov. 28th, 1870. William H. Townsend, notary public, Arapahoe County, Colorado. Date of instrument Nov. 28th, 1870. Date of filing, Dec. 14th, 1870.

Instrument: Land patent. Grantor, United States to Daniel H. Mulchoy, grantee. Record book No. 7, page 77. Description of property, NW. ¼ S. 4, T. 1, R. 68 W. Acres, 158.16. Date of instrument, June 5th, 1871. Date of filing, Aug. 28th, 1871. Sheet No. 6, conveyance No. 5.

Instrument: Warranty deed. Grantor, Daniel H. Mulchoy, grantee, to David H. Moffat, jr., tr. Denver Land Association. Consideration, $700. Record book No. 2, page No. 16. Description of property, NW. ¼ sec. 4, T. 1 N., R. 68 W. Acres, 158. Remarks, acknowledged Nov. 28th, 1870. Wm. H. Townsend, notary public, Arapahoe County, Colo. Sheet No. 7, conveyance No. 6. Date of instrument, Nov. 28th, 1870. Date of filing, Dec. 14th, 1870.

217 Instrument: Land Patent, Record Book No. 7, page No. 17. Grantor, United States, grantee to Sylvanus Drew. Date of instrument, Apr. 10th, 1871. Date of filing, June 22nd, 1871. Description of property, SW ¼, sec. 4, T. 1, R. 68, acres 160. Sheet No. 8. Conveyance No. 7.

Instrument: Warrenty deed. Grantor, Sylvanus Drew, grantee to David H. Moffat, jr. Tr. Denver Land Association. Consideration $700. Record Book No. 2, page 32. Date of instrument, Oct. 31st. 1870. Date of filing Dec. 14, 1870. Description of property, SW. ¼, sec. 4, T. 1, R. 68, acres, 160. Remarks: Acknowledged Oct. 31, 1870. William H. Townsend, Notary Public, Arapahoe County, Colo. Sheet No. 9. Conveyance No. 8.

Instrument: Land Patent. Grantor, United States, grantee to Thomas Faver. Record Book No. 7, page 22. Date of instrument, February 10th, 1871. Date of filing, June 22, 1871. Description of property, NE. ¼ sec. 8, town. 1, range 68, acres 160. Sheet No. 10, conveyance No. 9.

Instrument: Warrenty deed. Grantor, Thomas Faver, grantee to David H. Moffat, jr. Tr. Denver Land Association. Consideration $800. Record book No. 1, page 581. Date of Instrument, Aug. 31, 1870. Date of filing Sept. 14, 1870. Description of property, NE. ¼ sec. 8, town. 1,

range 68, acres 160. Remarks, acknowledged Aug. 31, 1870, William H. Townsend, notary public, Arapahoe County, Colo. Sheet No. 11, conveyance No. 10. No. N. P. Seal.

Instrument: Land Patent. Grantor, United States grantee to William Roads, Record Book No. 7. page 21. Date of instrument, Feb'y. 10th, 1871. Date of filing, Jan. 22, 1871. Description of property, SE. ¼ sec. 8, Town. 1, range 68, acres 160. Sheet No. 12, conveyance No. 11,

Instrument: Warrenty Deed. Grantor, William Roads, grantee to David H. Moffat, jr., Tr. Denver Land Association, Record Book No. 1. page 582.

218 Description of property S. E. ¼, sec. 8, town. 1, range 68, acres, 160. Remarks. Acknowledged Aug. 31, 1870. William H. Townsend, notary public, Arapahoe County, Colo. Sheet No. 13, conveyance No. 12. Date of instrument, Aug. 31, 1870. Date of filing. Sept. 14, 1870.

Instrument: Land patent. Grantor, United States, grantee to Alfred Rollins, Record book No. 1, page 360. Date of instrument, Feb'y 1, 1869. Date of filing, June 28, 1869. Description of property, N. W. ¼, Sec. 8, Town. 1, Range 68, acres, 160. Sheet No. 14, conveyance, No. 13.

Instrument: Quit claim deed. Grantor, Alfred Rollins, grantee to David Briggs. Consideration $500. Record book No. 1, page 562. Date of instrument, June 10, 1870. Date of filing, July 30, 1870. Description of property, N. W. ¼ Sec. 8, Town. 1, Range 68; acres, 160. Remarks. Acknowledged June 10, 1870. John W. Ratliffe, notary public, Gilpin County, Colo. Sheet No. 15, conveyance No. 14.

Instrument: Warrenty deed. Grantor, David Briggs, grantee to Colorado Coal Co. [Ctf. of incorporation on file.] Consideration, $200. Record book No. 2, page 98. Date of instrument, Dec. 27, 1870. Date of filing, Febr'y 1, 1871. Description of property, N. W. ¼ Sec. 8, Town. 1, Range 68, acres, ——. Sheet No. 16, conveyance No. 15. Remarks: Acknowledged January 3, 1871. W. H. Pierce, notary public, Arapahoe County, Colo.

Instrument: Deed. Grantor, Colorado Coal Co. grantee to David H. Moffatt, Jr., Tr. Denver Land Association. Record book No. 2, page No. 136. Date of instrument, Feb'y 15th, 1871. Date of filing, Feb'y 23, 1871. Description of property: Und. ½, N. W. ¼, Lot. Sec. 8, Town. 1, Range 68 and und. ½ in opening improvements and mining fixtures and other property.

219 This deed is subject to consideration of stipulation in a contract dated Sept. 17th, 1870, between above parties. Official character of Edw. Clark as N. P. certified by J. M. Johnson, co. clerk, Broome Co., N. Y., Feb. 16th, 1871. Remarks, sheet No. 17, conveyance No. 16. Acknowledged by Ransom Balcom, prest., and John S. Wells, secretary, Colorado Coal Co. Before Edw. K. Clark, notary public, Broome Co., N. Y., Feb. 15, 1871.

Instrument: Warranty deed. Grantor, Colorado Coal Co., grantee to David H. Moffat, jr., tr. Denver Land Association. Consideration, $100. Record book No. 7, page 578 Date of instrument, July 1, 1872; date of filing, July 15th, 1872. Description of property: Und. ½ NW. ¼, sec. 8, town. 1, range 68, and other property. This deed is made to correct

an error in deed given by 1st party to David H. Moffat, jr.. tr. Feb. 15th, 1871. Official character of W. B. Edwards, co. judge, certified by Joseph M. Johnson, clerk of courts, July 2, 1872, Broome Co. N. Y. Remarks, sheet No. 18, conveyance No. 17. Acknowledged July 2, 1872. W. B. Edwards, co. judge, Broome Co., N. Y.

Instrument: Quit claim deed. Grantor, David H. Moffat, jr., tr. Denver Land Association, grantee to St. Louis and Denver Land and Mining Co. Consideration, $1; record book No. 8, page No. 8. Date of instrument, Aug. 23, 1872; date of filing, Aug. 26th, 1872. Description of property: Und. ½ NW., sec. 8, town. 1, range 68 acres — and other property. Remarks, sheet No. 19, conveyance No. 18. Acknowledged Aug. 23, 1872. John C. Anderson, notary public, Arapahoe Co., Colo.

Instrument: Land patent. Grantor, United States, grantee to John Newton, record book No. 7, page No. 26. Date of instrument, Apr. 10, 1871; date of filing, June 22, 1871. Description of property, NE., sec. 10, town. 1, range 68; acres, 160. Sheet 20, conveyance No. 19.

220 Instrument: Warranty deed. Grantor, John Newton, grantee to David H. Moffat, jr., tr., Denver Land Association. Consideration, $750. Record book No. 2, page No. 26. Date of instrument, Oct. 17, 1870. Date of filing, Dec. 14, 1870. Description of property, N. E. ¼ sec. 10, town 1, range 68 acres, 160. Remarks, sheet No. 21, conveyance No. 20. Acknowledged Oct. 17th, 1870. Wm. K. Townsend, notary public, Arapahoe Co., Colo.

Instrument: Land patent. Grantor United States, grantee to James R. Giddings. Record book No. 7, page No. 27. Date of instrument, Apr. 10th, 1871. Date of filing, June 22, 1871. Description of property, N. W. ¼ sec. 10, town 1, range 68; acres, 160. Sheet No. 22, conveyance No. 21.

Instrument: Warranty deed. Grantor, James R. Giddings, grantee to David H. Moffat, jr., tr. Denver Land Association. Consideration, $750. Record book No. 2, page No. 27. Date of instrument, Oct. 17, 1870. Date of filing, Dec. 14, 1870. Description of property, N. W. ¼ sec. 10, town 1, range 68 acres, ——. Sheet No. 23, conveyance No. 22. Remarks. Acknowledged Oct. 17th, 1870. Wm. H. Townsend, notary public, Arapahoe, Co., Colo.

Instrument: Land patent. Grantor, United States, grantee to James Kinsman. Record book No. 7, page No. 25. Date of instrument, Apr. 10, 1871. Date of filing, June 22, 1871. Description of property, S. E. ¼ sec. 10, town 1, range 68; acres, 160. Sheet No. 24, conveyance No. 23.

Instrument: Warranty deed. Grantor, James Kinsman, grantee to David H. Moffat, jr., tr. Denver Land Association. Con ideration, $500. Record book No. 2, page No. 21. Date of instrument, Oct. 17, 1870. Date of filing, Dec. 14, 1870. Description of property, S. E. ¼ sec. 10, town 1, range 68; acres, 160. Remarks, sheet No. 25, conveyance No. 24. Acknowledged Oct. 17, 1870. Wm. H. Townsend, notary public, Arapahoe Co., Colo.

221 Instrument: Land patent. Grantor United States, grantee to David Oliver. Record book No. 7, page No. 18. Date of instrument, Apr. 10, 1871. Date of filing, June 22, 1871. Description of property, SW. ¼, sec. 10, town. 1, range 68, acres 160. Sheet No. 26, conveyance 25.

Instrument: Warranty deed. Grantor, David Oliver, grantee to David H. Moffat, Jr., tr. Denver Land Association. Consideration $500. Record book, No. 2, page No. 25. Date of instrument, Oct. 17, 1870. Date of filing Dec. 14, 1870. Description of property, SW. ¼, sec. 10, town. 1, range, 68, acres —. Remarks, sheet No. 27, conveyance No. 26. Acknowledged Oct. 17th, 1870. Wm. H. Townsend, notary public, Arapahoe Co., Colo.

Instrument: Condemnation of land. Grantor, St. Vrains Coal Co., grantee vs. George Tttch, Mary M. Clark, Mana E. Clark, Mary F. Clark, Pearle E. Clark, Thomas G. Mayfield, Charles Mayfield St. Louis and Denver Land Mining Co., and Colorado Coal Co. Record book No. 11, page No. 296. Date of Instrument, Nov. 26, 1877. Date of filing, Nov. 27, 1877. Description of property, sec. 10, town. 1, range 68, and other property. By order of district court at Nov. term, 1877. Right of way 25 feet wide was granted plaintiff through above property. Remarks, sheet No. 28, conveyance No. 2 7. Certified by William J. Kram, clerk district court, Weld Co., Colo., Nov. 26, 1877.

Instrument: Land patent. Grantor, United States, grantee to Edward Drake. Record book No. 7, page No. 24. Date of instrument Apr. 10, 1871. Date of filing June 22, 1871. Description of property, NE. sec. 14, town 1, range 68, acres 160. Sheet No. 29, conveyance No. 28.

Instrument: Warranty deed. Grantor, Edward Drake, grantee to David
H. Moffat, Jr., tr., Denver Land Association. Consideration, $700.
222 Record book No. 2, page No. 31. Date of instrument, Oct. 31,
1870. Date of filing, Dec. 14, 1870. Description of property, NE. sec. 14, town 1, range 68; acres, 160. Remarks, sheet No. 30, conveyance No. 29. Acknowledged, Oct. 31, 1870. Wm. H. Townsend, notary public, Arapahoe Co., Colo.

Instrument: Land patent. Grantor, United States, grantee to Emanuel Fisk. Record book, No. 7, page, No. 16. Date of instrument, Apr. 10, 1871. Date of filing, June 22, 1871. Description of property, NW. sec. 14, town. 1, range 68, acres, 160. Sheet, No. 31. Conveyance, No. 30.

Instrument: Warranty deed. Grantor, Emanuel J. Fisk, grantee to David H. Moffat, jr., tr., Denver Land Association. Consideration, $650. Record book, No. 2, page, No. 30. Date of instrument, Oct. 31, 1870. Date of filing, Dec. 14, 1870. Description of property, NW. ¼ sec. 14, town. 1, range 68; acres, 160. Remarks, sheet, No. 32, conveyance, No. 31. Acknowledged, Oct. 31, 1870. Wm. H. Townsend, notary public, Arapahoe Co., Colo.

Instrument: Land patent. Grantor, United States, grantee to George D. Miner. Record book, No. 7, page, No. 27. Date of instrument, Apr. 10, 1871. Date of filing, June 22, 1871. Description of property, SE. ¼ sec. 14, town. 1, range 68; acres, 160. Sheet, No. 33, conveyance, No. 32.

Instrument: Warranty deed. Grantor, George D. Miner, grantee to David H. Moffat, jr., tr., Denver Land Association. Consideration, $800. Record book, No. 2, page, No. 20. Date of instrument, Oct. 31, 1870. Date of filing, Dec. 14, 1870. Description of property, SE. sec. 14, town. 1, range 68, acres, 160. Remarks, sheet, No. 34, conveyance, No. 33. Acknowledged, Oct. 31, 1870. Wm. H. Townsend, notary public, Arapahoe Co., Colo.

223 Instrument: Land patent. Grantor, United States, grantee to Mark Moltz. Record book No. 7, page No. 20. Date of instrument, Apr. 10, 1871. Date of filing, June 22, 1871. Description of property, SW. ¼ sec. 24, town. 1, range –; acres, 160. Sheet No. 35. Conveyance, No. 34.

Instrument: Warranty deed. Grantor, Mark Moltz, grantee to David H. Moffat, jr., tr. Denver Land Association. Consideration, $750. Record book No. 2, page No. 28. Date of instrument, Oct. 31, 1870. Date of filing, Dec. 14, 1870. Description of property, SW. ¼ sec. 14, town. 1, range 68; acres, 160. Remarks: Sheet No. 36; conveyance No. 35; acknowledged Oct. 31, 1870. Wm. H. Townsend, notary public, Arapahoe Co., Colo.

Instrument: Quit-claim deed. Grantor, David H. Moffatt, jr., tr. Denver Land Association, grantee to Colorado Coal Co. Consideration, $6,633.27. Record book No. 7, page No. 577. Date of instrument, June 1, 1872. Date of filing, July 15, 1872. Description of property, und. ½ sec. 4, und. ½ E. ½ of sec. 8, town. 1, range 68, und. ½ sec. 10, und. ½ sec. 14, and other property. Remarks: Sheet No. 37, conveyance No. 36; acknowledged June 29, 1872. John C. Anderson, notary public, Arapahoe Co., Colo.

Instrument: Deed. Grantor, Colorado Coal Co. grantee to Sidney Dillon, trustee. Consideration, $40,000. Record book No. 30, page No. 299. Date of instrument, Sept. 17, 1881. Date of filing, Oct. 14, 1881. Description of property, sec. 4 und. ½ sec. 4, 10, 14, town 1, range 68; und. ½ E. ½ and N. ½ W. ½, sec. 8, and other property; excepts NE. NE. 14, 1, 68. Official character of D. H. Richardson as N. P. certified by M. W. Scott, county clerk, Broome Co., N. Y., by Chas. F. Tupper, deputy, Sept. 30th, 1881. Remarks: Sheet No. 38, conveyance No. 37; acknowledged Sept. 28th, 1881, by E. C. Kattle, pres't, and J. G. Wells, secretary Colorado Coal Co., before A. S. Richards, notary public Broome Co., N. Y.

Instrument: Deed. Grantor, Colo. Coal Co., grantee to Sidney Dillon. Consideration, $100. Record book No. 30, page No. 297. Date of instrument, Sept. 29, 1881. Date of filing, Oct'r 14, 1881.

224 Description of property, und. ½ N. E. N. E., sec. 14, town. 1, range 68. Official character of S. S. Richards as N. P., certified by M. W. Scott, co. clerk, Broome Co., N. Y., by Chas. F. Tupper, deputy, Sept. 30, 1881. Remarks: Sheet No. 39, conveyance No. 38; acknowledged by E. C. Kattel, pres't, and J. G. Wells, sec'y, Colo. Coal Co., before D. S. Richards, notary public, Broome Co., N. Y.

Instrument: Deed. Grantor, David H. Moffat, jr., tr. Denver Land Association, grantee to St. Louis and Denver Land and Mining Co., consideration $1; record book No. 3, page No. 82. Date of instrument, July 28, 1871; date of filing July 31, 1871. Description of property: und. ½ sec. 4; und. N. E. ¼ and S. E. ¼ and N. W. ¼, sec. 8, town 1, range 68; und. ½ sec. 10, und. ½ sc. 14 and other property. Remarks, sheet No. 40; conveyance, No. 39. Acknowledged July 28, 1871, John C. Anderson, notary public, Arapahoe Co., Colo.

Instrument: Deed. Grantor, St. Louis and Denver Land and Mining Co., grantee, Sidney Dillon, trustee. Consideration, $40,000. Record book No. 30, page No. 478. Date of instrument, Feb. 7, 1882; date of filing,

Mar. 9, 1882. Description of property: Und. ½ sec. 10, town 1, range 68, sec. 4; und. ½ E. ½ and N. W. ¼, sec. 8, and other property. Resolution authorizing sale attached. Remarks, sheet No. 41; conveyance, No. 40. Acknowledged by John D. Perry, pres'd, and R. R. McCormick, secretary St. Louis and Denver Land and Mining Co., before C. D. Greene, jr., commissioner for Colorado, at St. Louis, Mo., Feb'y 7th, 1882.

Instrument: Quit-claim deed. Grantor, Sidney Dillon, trustee, grantee to the Union Coal Co. (ctf. of incorporation on file). Consideration, $86,300. Record book No. 36, page No. 425. Date of instrument, Oct. 17, 1883; date of filing, Oct. 26, 1883. Description of property: Sec. 4, all of sec. 4, 10, 14, town 1, range 68, E. ½ E. & N. W. ¼ sec. 8, and other property. Remarks, sheet No. 42; conveyance No. 41. Acknowledged Oct. 17, 1883. Edward Canfield, notary public, New York Co., N. Y.

STATE OF COLORADO,
County of Weld, ss:

225 Sheet No. 43.—I do hereby certify that I have examined the title of the premises described on sheet No. 1 of this abstract, and find no conveyances of the same on record in the recorder's office of said county by either of the parties named herein as grantors or grantees, prior to the date of record of the instruments made by them respectively, as herein set forth, nor any judgments in any of the courts of said county against either of said parties, which are liens upon said lands, or tax sales of said premises remaining uncancelled of record other than herein set forth.

The foregoing abstract consists of 41 conveyances and of 43 sheets, numbered consecutively from one to 43 inclusive.

Witness my hand and official seal this 24 day of February, A. D. 1886, at 8 o'clock a. m.

[SEAL.] (Signed) JAMES B. PHILLIPS,
County Clerk and Recorder.
By W. A. HOTCHKISS,
Deputy.

(Endorsement:) 1 m. 6. 27541–3.

Div. "G," Exhibit 13. A. W. B. B. F. G. H. O. B. M. C.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., 1886.

I, William A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed copies of papers in the matter of Denver, Colorado, pre-emption cash entry No. 1545, in the name of James Kinsman are true and literal exemplifications from the originals on file in this office.

In testimony whereof I have hereunto subscribed my name and
226 caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] (Signed) WM. A. J. SPARKS,
Commissioner of General Land Office.

No. 1545.] LAND OFFICE AT DENVER, COLORADO,
Oct. 17, 1870.

I do hereby certify that in pursuance of law James Kinsman, Weld County, State of Colorado, on this day purchased of the register of the office the lot or southeast ¼ of sec. 10 (10) in township one (1) north, of range 68 west, containing 160 acres, at the rate of two dollars and 50 cents per acre, amounting to four hundred (400) dollars, for which the said James Kinsman has made payment in full as required by law.

Now, therefore, be it known that on presentation of this certificate to the Commissioner of the General Land Office the said James Kinsman shall be entitled to receive a patent for the lot above described.

(Signed) LOUIS DUGAL,
Register.

(Pre-emption act, 1841.)

(Endorsement:) Cash, No. 1545. Cash entry. Land office at Denver, Colorado, Oct. 17, 1870. P. A., 1841. D. S. No. 1546, May 12 and Aug. 12, '70. Unoff'd. Mar. 14, 1870. Woods. No conflict. Approved for patent, Mar. 21, '71. Minor. April 10, 1871. Vol. 3, page 322. 2 N and W, 4.

No. 1545.] RECEIVER'S OFFICE AT DENVER, COLORADO,
Oct. 17*th*, 1870.

Received from James Kinsman, of Weld County, Colorado, the sum of four hundred dollars, being in full for the southeast quarter of section No. 10 (ten), in township No. one (1) north, of range 68 west, containing 160 acres at $2.50 per acre. $400.

227 (Signed) C. H. MCLAUGHLIN,
Receiver.

(Pre-emption act, 1841. Patent delivered by R. R.)

No. 1545.] RECEIVER'S OFFICE AT DENVER, COLORADO,
Oct. 17*th*, 1870.

Received from James Kinsman, of Weld County, Colorado, the sum of four hundred dollars, being in full for the southeast quarter of sec. ten (10), in township one (1) north, of range 68 west, containing 160 acres, at $2.50 per acre. $400.

(Signed) C. H. MCLAUGHLIN,
Receiver.

(Pre-emption act, 1841.)

Affidavit required of pre-emption claimant.

I, James Kinsman, claiming the right of pre-emption under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the sale of the public lands, and to grant pre-emption rights," approved September 4th, 1841, to the southeast quarter of section number ten (10), of township number one (1) north, of range number 68 west, subject to sale at Denver, Colorado, do solemnly swear that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor have I settled upon and improved said land to sell the

same on speculation, but in good faith to appropriate it to my own exclusive use or benefit; and that I have not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which I may acquire from the Government of the United States should inure in whole or in part to the benefit of any person except myself.

(Signed) JAMES KINSMAN.

I, C. H. McLaughlin, receiver of the land office at Denver, Colorado, do hereby certify that the above affidavit was taken and subscribed
228 to before me this 17th day of Oct., A. D. 1870.

(Signed) C. H. MCLAUGHLIN,
Receiver.

U. S. DISTRICT LAND OFFICE.

TERRITORY OF COLORADO:
County of Arapahoe, ss:

In the matter of proof required of James Kinsman, to enter under the pre-emption laws, the southeast quarter of section ten (10) in township one (1) north, of range 68 west, containing 160 acres, in the county of Weld and Territory of Colorado, James R. Giddings, being duly sworn, upon his oath deposes and says in answer to the interrogatories proposed to him by the receiver of the land office at Denver, Territory of Colorado, as follows, viz:

1. Interrogatory. What is your name, age, occupation and residence?

Ans. James R. Giddings; aged 36 years; a farmer; I reside in the County of Weld and Territory of Colorado.

2. Interrogatory. Are you acquainted with James Kinsman, the claimant? If so, how long have you known him, and do you know that on the 12th day of May, A. D. 1870 he was a citizen of the United States or that he had filed his declaration of intention to become a citizen?

Ans. I have known James Kinsman, the claimant, for about two years last past, and know that on the 12th day of May, A. D. 1870, he was a citizen of the United States.

3. Interrogatory. Is the aforesaid claimant a single man, over the age of twenty-one years, or the head of a family; if the head of a family, of what does that family consist?

Ans. He is a single man, over the age of 21 years.

4. Interrogatory. Do you know that the aforesaid James Kinsman, claimant, is an inhabitant of or settled upon any tract of public
229 land on which he has made a settlement and erected a dwelling-house and made other improvements since the first day of June, A. D. 1840. If so, describe the tract of land, state the time such settlement was made, and if since that time his residence thereon has been continuous, the kind of dwelling house erected, and what other improvements he has made thereon since the time of settlement, and for what purpose it is used, and has claimant adandoned a residence on his own land in this Territory to make this settlement?

Ans. The claimant, James Kinsman, is now an inhabitant of and settled upon the southeast quarter of section ten (10), township one (1) north, of range 68 west, in the county of Weld and Territory of Colorado, on the 12th day of May, A. D. 1870, and has since that time continued to reside

thereon, and has erected a one-story frame dwelling-house, fully enclosed size 18 by 20 feet, with one door and 2 windows, with shingled roof and board floor; and has plowed and broken ten (10) acres or more of said tract of land, and built thereon 200 rods or more of post and wire fence, and that he uses the land for agricultural purposes, and has also built thereon a stable, and has dug a well thereon, and has not abandoned a residence on his own land to make this settlement.

(Signed) JAMES R. GIDDINGS.

Sworn and subscribed to before me this 17th day of October, A. D. 1870.

(Signed) C. H. McLAUGHLIN,
Receiver of the land office at Denver, C. T.

(Endorsement:) No. 2000. U. S. circuit court, district of Colorado, at Denver. The United States vs. The Union Coal Company. Evidence for complainant filed June 5th, 1886. William A. Willard, clerk.

230 And afterwards and on, to wit, the 14th day of June, A. D. 1888, the same being one of the regular judicial days of the May term, A. D. 1888, of said court—present, the honorable David J. Brewer, circuit judge—the following further proceedings were had and entered of record in said court and in said cause, to wit:

Order.—Bill dismissed.

UNITED STATES OF AMERICA
vs.
THE UNION COAL COMPANY. } In chancery. 2000.

Bill to cancel patents and for other relief.

This cause having heretofore come on to be heard at this term, and having been submitted to the court, and thereupon on consideration thereof, it is ordered, adjudged, and decreed by the court that the equities of this cause are with the defendants, and the bill of complaint herein be, and it is hereby, dismissed.

And afterwards and on, to wit, the 12th day of July, A. D. 1888, the same being one of the regular judicial days of the May term, A. D. 1888, of said court—present, the honorable Moses Hallet, district judge—the following further proceedings *was* had and entered of record in said court and in said cause, to wit:

Order allowing appeal.

231 UNITED STATES OF AMERICA,
vs.
THE UNION COAL COMPANY. } In chancery. 2000.

Bill to cancel patents and for further relief.

At this day comes the said complainant, by H. W. Hobson, esq., United States attorney, and the said defendant, by Willard Teller, esq., its solicitor, also comes.